

12-2297pr

To be argued by:
D. B. KARRON

United States Court of Appeals
FOR THE SECOND CIRCUIT
Docket No. 12-2297



DANIEL B. KARRON,

Petitioner - Appellant,

—v.—

UNITED STATES OF AMERICA,

Respondent - Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX Volume 9 FOR THE PETITIONER - APPELLANT

D. B. KARRON
pro se
348 East Fulton Street
Long Beach, New York 11561
(516) 515- 1474
drdbkarron@gmail.com

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8657KAR6

Gurfein - cross

1 BY MR. RUBINSTEIN:

2 Q. Let me show you this document and mark it as -- it's part
3 of actually government's 3507-S, at page 27 of 28 pages.

4 THE COURT: 3507 what?

5 Q. Before you testified, did you have an opportunity, sir, to
6 go over e-mails that either you sent or that were sent to you?

7 A. No, not particularly, no.

8 Q. You are Elisha Gurfein and your e-mail address is
9 egurfein@earthlink.net, right?

10 A. Correct.

11 Q. Is that correct, sir?

12 A. Yes.

13 Q. I direct your attention to page 28.

14 A. Page 28?

15 Q. Take a look at this page here.

16 THE COURT: Page what?

17 MR. RUBINSTEIN: It's page 27, your Honor, and 28.

18 THE COURT: What's the date?

19 THE WITNESS: This e-mail was dated February 1, 2003.

20 I don't recall ever receiving this e-mail. This is more than
21 six months or so after I left. I don't remember seeing this
22 e-mail.

23 THE COURT: Who is the e-mail from?

24 MR. RUBINSTEIN: It's from Dr. Karron to Mr. Gurfein.

25 And I would offer this portion of Government's 3507-S.

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Gurfein - cross

1 MR. EVERDELL: Objection, your Honor.

2 THE COURT: Sorry?

3 MR. EVERDELL: Objection.

4 THE COURT: I didn't hear the statement.

5 MR. EVERDELL: He is offering the e-mail in evidence.

6 THE COURT: Objection sustained.

7 Q. Well, is it a fact, sir, while in the year you had worked
8 for CASI you had charged \$2,000 for parking?

9 A. I don't remember that number, no.

10 Q. Do you recall charging CASI \$1,589 for travel?

11 A. I don't recall that number either.

12 Q. Do you recall being asked by Dr. Karron to provide backup
13 and justification for expenses that you had?

14 A. No.

15 Q. Now, there was, was there not, in the budget that we are
16 talking about, \$110,500 approved for fringe benefits, correct?

17 A. Show me where that is.

18 Q. Do you still have that Exhibit 22 in front of you?

19 A. Hold on. What page is that on here?

20 THE COURT: 22, it's the third page in what he is
21 asking about.

22 MR. RUBINSTEIN: Judge, I think, with all due respect,
23 the fourth page in.

24 THE WITNESS: What page?

25 MR. RUBINSTEIN: If you look on page 4, or on page 3

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Gurfein - cross

1 as the court said.

2 THE WITNESS: I am looking for a figure of \$110,500.

3 I do not see that. Oh, yes, I do. Sorry, I do see it.

4 Q. Now, who was the accountant for CASI when you first started
5 working there?

6 A. Jill Feldman, I think.

7 Q. And did you have contact with her?

8 A. Brief.

9 Q. Was she replaced?

10 A. Yes.

11 Q. And who replaced her?

12 A. Joan Hayes.

13 Q. Approximately when was that?

14 A. It was later. I'm not sure exactly when Joan came into the
15 picture.

16 Q. And what was her function as the accountant for CASI?

17 THE COURT: Which one? Hayes?

18 MR. RUBINSTEIN: Hayes.

19 A. What was Hayes' function?

20 Q. Yeah. Did she work under you? You were the business
21 manager?

22 A. No, no. You have to remember all my authority was taken
23 from me by Dr. Karron. The idea that I had any authority over
24 anybody is just fallacious.

25 Q. That letter merely said that you couldn't sign checks,

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Gurfein - cross

1 right?

2 A. That's correct.

3 Q. You were getting paid a gross salary of \$100,000 a year,
4 right?

5 A. Correct.

6 Q. And Joan Hayes was working there as an accountant, correct?

7 A. Correct.

8 Q. Did you see her when you went there to CASI?

9 A. Sure.

10 Q. How often -- you said you would be there like three days a
11 week?

12 A. The question is how often was she there when I was there.
13 That varied.

14 Q. How often would you see her?

15 A. She would be there during a certain time interval. I
16 remember seeing her there more often than others but that was
17 later on. She started showing up there later on, not early in
18 the project, not in the first year anyhow.

19 Q. Well, when you say the first year, you mean 2001.

20 A. Well, October 1, 2001 until September 30, 2002 when I was
21 there. That's the first year of the grant.

22 Q. So, you did not see her often when you were --

23 A. Oh, I saw her very often towards the end of that period I
24 just mentioned, but not at the beginning.

25 Q. Would you see her at all?

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Gurfein - cross

1 A. Sure.

2 Q. In the beginning?

3 A. She wasn't on in the beginning. Jill Feldman was on in the
4 beginning.

5 Q. Jill Feldman left early in 2002, did she not?

6 A. Yeah, I don't remember the exact date.

7 Q. Is it your understanding that Hayes had purchased Jill
8 Feldman's practice?

9 MR. EVERDELL: Objection.

10 THE COURT: Sustained.

11 Q. Well, did you observe -- by the way, did you have access to
12 the computer at CASI?

13 A. Did I have access to it?

14 Q. Right.

15 A. What does that mean?

16 MR. EVERDELL: Objection.

17 Q. Could you use the computer at CASI?

18 A. Yeah, sure.

19 Q. Were you aware that --

20 THE COURT: You are talking about the business
21 computer?

22 MR. RUBINSTEIN: Yes.

23 Q. Were you aware that they had a program, software program
24 called Quick Books, installed?

25 A. Yes.

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Gurfein - cross

1 Q. And are you aware that that was purchased prior to October
2 1, 2001, with funds of Dr. Karron?

3 A. I did not know that.

4 Q. But you knew it when you were working there that this Quick
5 Book system was in effect.

6 A. Yes.

7 Q. And also were you aware that there was a program in effect
8 to scan all documents into that same computer system?

9 A. Yes.

10 Q. Did you participate in scanning documents into --

11 A. No.

12 Q. Did you participate in that Quick Book system generating
13 its own checks?

14 A. No.

15 Q. Did it?

16 A. That it generated its own checks? Did I take part in that?
17 No.

18 Q. No, no, but did the system generate a check?

19 A. I'm sorry?

20 Q. The Quick Book system, did it generate checks?

21 A. I don't know that.

22 Q. Is it fair to say that Dr. Karron would have virtually
23 every piece of paper that came into the CASI --

24 MR. EVERDELL: Objection.

25 Q. -- grant scanned?

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Gurfein - cross

1 THE COURT: Objection sustained.

2 Q. Well, who did you see scan documents into that computer
3 system?

4 A. Dr. Karron for the most part, and maybe some other people.

5 Q. Well, Margaret Ferrand, did you see her scan anything?

6 A. No.

7 Q. As a matter of fact, how many people were the maximum that
8 were working at CASI at 300 East 33rd Street at one time?

9 A. I can't say for sure at this point. Working for CASI on
10 the grant?

11 Q. Yes.

12 A. Well, various people came and left, so it's a little bit
13 hard to really know that number exactly. If you ask me how
14 many people would be present at any one time in that living
15 room? I would say probably maybe a maximum of six or seven at
16 the most. At most. But that was not the usual.

17 Q. But you could have as many as that.

18 A. That would be the absolute maximum, seven maybe, probably
19 less.

20 Q. Were there also volunteers that Dr. Karron had recruited to
21 work on this project?

22 A. I think he might have had a graduate student or two like
23 that.

24 THE COURT: Would your six or seven include the
25 volunteers, or are you excluding the volunteers?

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Gurfein - cross

1 THE WITNESS: I don't recall, your Honor, seeing a
2 group more than -- except when there was a site review with
3 people from NIST, I don't recall seeing more than half a dozen
4 people, maybe seven, at any one time.

5 Q. How about -- was Dr. Wolberg there?

6 A. Rarely.

7 Q. Was Jim Cox there?

8 A. Yes.

9 Q. Was Matt Rothman there?

10 A. Yes.

11 Q. Scott Albin?

12 A. Scott Albin? Yes, but not all at the same time.

13 Q. And you said there was a living room. Was there any living
14 room furniture in there?

15 A. De minimis.

16 Q. In fact it was basically a computer lab, correct?

17 A. For the most part, correct.

18 Q. Let me show you what has been marked as BBB for
19 identification and also marked CCC for identification. I show
20 you these two pages of photographs, and these are the letters.
21 Take a look at defendant's BBB for identification.

22 A. Yes.

23 Q. Tell me if you recognize what's depicted in those
24 photographs.

25 THE COURT: The question is: Is it a fair and

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Gurfein - cross

1 accurate representation?

2 THE WITNESS: Yes, this appears to be Dr. Karron's
3 living room as I remember it.

4 MR. RUBINSTEIN: I would offer BBB into evidence, your
5 Honor.

6 MR. EVERDELL: No objection.

7 THE COURT: BBB is admitted in evidence.

8 DEPUTY COURT CLERK: Judge, I think that's already in.

9 THE COURT: It is in evidence. I'm sorry.

10 MR. RUBINSTEIN: No, it wasn't. It was marked for
11 identification.

12 THE COURT: I think the government consented to it in
13 evidence. Go ahead.

14 MR. RUBINSTEIN: CCC?

15 THE COURT: You had them up on the board, didn't we?
16 Aren't these the pictures we had up on the screen.

17 MR. RUBINSTEIN: Oh, I'm sorry. She said she couldn't
18 testify about it, I think. Thank you, Robert. You're right.
19 I apologize.

20 THE COURT: Go ahead.

21 Q. You recognize what the photographs are depicted in CCC?

22 A. Not all of the items I do recognize in CCC. I recognize --

23 MR. RUBINSTEIN: May I approach the witness?

24 A. I recognize the bathroom, not much else. I never saw this
25 sign. I don't remember this here. I remember this. I

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Gurfein - cross

1 remember this telephone situation in the bathroom, but I don't
2 remember anything else on this page.

3 Q. Do you recall anything about Dr. Karron's room itself?

4 A. There were some computers in there.

5 Q. That's his bedroom.

6 A. Yes.

7 MR. RUBINSTEIN: Let me publish BBB for the jury.

8 Q. Now, starting, sir, at the top left as we look at this
9 exhibit, what portion of the area referred to as the living
10 room was this?

11 A. What does that mean?

12 Q. Well, do you see that large -- let me point to it -- I'm
13 pointing this at something shown on the right hand -- there are
14 six photographs, correct?

15 A. Yes.

16 Q. In this exhibit? This is on the right-hand side, the
17 middle photograph. Do you recognize what that is?

18 A. That looks like a screen, but I --

19 Q. How about down here on the lower right?

20 A. That looks like a screen.

21 Q. Was there a screen at that facility?

22 A. There was one installed while I was there.

23 Q. And who installed it?

24 A. Abe Karron, to my knowledge. I saw him install it.

25 Q. And that was a screen similar to the screen that we have

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Gurfein - cross

1 here. I mean --

2 A. Yes, for a room that's about one quarter the size or one
3 fifth the size.

4 Q. And there was also a projector similar to the projector
5 right over here, correct?

6 A. Probably was, yeah.

7 Q. Do you recognize this item that's in evidence as Government
8 Exhibit 123?

9 A. Well, not explicitly, but I could have seen it before.

10 Q. OK. Now, were you ever present when presentations were
11 made by the people at CASI on this ATP project?

12 A. Yes.

13 Q. And when presentations were made, was that screen utilized?

14 A. One time I was at such a presentation, yes.

15 Q. And who else was present?

16 A. Dr. Karron and a whole bunch of other people, including
17 Jayne Orthwein and B.J. Lide and some other people.

18 Q. Are you aware -- are you aware that Dr. Karron would go
19 sometimes to New Jersey to lecture and was called upon to
20 lecture on the ATP project?

21 A. New Jersey? Not to my knowledge.

22 Q. Anywhere.

23 A. If it happened, it was on no regular basis that I knew
24 about.

25 Q. Now, going to the top picture on the left, do you see, are

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Gurfein - cross

- 1 those two computers?
- 2 A. Yes.
- 3 Q. And --
- 4 A. Well, they're monitors, anyhow.
- 5 Q. Monitors. And are those the monitors you discussed before,
- 6 the ones that cost --
- 7 A. I don't think so.
- 8 Q. And these, do you see those shelves?
- 9 A. Yes.
- 10 Q. Do you know who constructed those shelves?
- 11 A. No.
- 12 Q. Do you know what was contained on those shelves?
- 13 A. Oh, various books and records, I think.
- 14 Q. By the way, was there an installation of wiring done in
- 15 that room?
- 16 A. In the living room?
- 17 Q. Right.
- 18 A. An installation of wiring?
- 19 Q. Right.
- 20 A. Probably.
- 21 Q. Was there an increase in the air conditioning?
- 22 A. There certainly was.
- 23 Q. It would get pretty hot in there, would it not?
- 24 A. It did.
- 25 Q. Between the computers and all the people?

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Gurfein - cross

1 A. Yes.

2 Q. And was it messy in there?

3 A. Was it what?

4 Q. Messy.

5 MR. EVERDELL: Objection. Objection.

6 THE COURT: Objection sustained. I don't see the
7 relevance of that.

8 Q. Well, you testified --

9 THE COURT: Please go ahead. No speaking objections.
10 Ask another question.

11 Q. Do you know a person named Chris Wegner?

12 A. I met Chris Wegner.

13 Q. And are you aware that Chris Wegner was a former employee
14 of CASI?

15 A. I do.

16 Q. And are you aware that when Chris Wegner was an employee of
17 CASI prior -- withdrawn -- that Chris Wegner had surgery
18 performed and was paid for by CASI?

19 A. That's possible, yes.

20 THE COURT: Was this during the grant period or not in
21 the grant period? We're talking about the grant period,
22 Mr. Rubinstein.

23 Mr. Gurfein, are we talking about the grant period?

24 THE WITNESS: I don't know when that was paid for, but
25 I don't think it was paid for during the grant period.

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Gurfein - cross

1 Q. But it was customary for CASI before they got the grant to
2 have these -- to pay for employee's benefits, right?

3 MR. EVERDELL: Objection.

4 THE COURT: You weren't connected with CASI until the
5 time -- you don't have knowledge of anything --

6 THE WITNESS: No. I have knowledge, but I think it
7 was prior to my being with CASI.

8 THE COURT: But you don't have knowledge of anything
9 that happened before you. You don't have personal knowledge of
10 anything that happened before you were at CASI.

11 THE WITNESS: Correct.

12 THE COURT: Do you have knowledge of this?

13 THE WITNESS: Dr. --

14 THE COURT: Personal knowledge.

15 THE WITNESS: Dr. Karron told me that --

16 THE COURT: No, all right. That's hearsay.

17 Q. When you were discussing with Dr. Karron the medical
18 expenses that you testified to before, did Dr. Karron in
19 response tell you anything about the policies of his company?

20 A. He said to me that in the case of Chris Wegner he got I
21 think it was \$10,000 from some other funds other than NIST
22 funds to pay for that surgery. That's what he told me.

23 Q. Did he tell you what his policy was for employees and
24 fringe benefits and health benefits prior to getting the grant?

25 A. Prior to getting the grant?

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Gurfein - cross

1 Q. Right.

2 A. No, he didn't tell me what the policy was prior to getting
3 the grant.

4 Q. Did you ever ask him if he ever charged any -- what kind of
5 fringe benefits he was accustomed to paying prior to getting
6 the grant?

7 A. In the most general way I know that his policy unwritten
8 was very loose.

9 Q. Now, were you involved in the hiring of Joan Hayes?

10 A. No.

11 Q. Did you have dealings with her involving any financial
12 documents?

13 A. Yes.

14 Q. Which financial documents were those?

15 A. I don't remember.

16 Q. You filed I believe the quarterly financial statements?

17 A. Yes.

18 Q. And did Ms. Hayes provide any of the figures that you
19 incorporated in those filings?

20 A. I don't think so. It's possible, but I don't recall that.

21 THE COURT: Where did you get the figures?

22 THE WITNESS: Well, basically the figures were not
23 representative of what was actually spent but representative of
24 what was received from NIST.

25 THE COURT: So where did you get the figures?

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8657KAR6 Gurfein - cross

1 THE WITNESS: Well, the figures for the quarterly
2 reports were basically a summation of data in the applications
3 made for the prior three months to NIST for the progress
4 payments, where we had to report what was done in the prior
5 month.

6 THE COURT: Where would you get those figures?

7 THE WITNESS: Well, those figures would again be
8 gotten from essentially from what we received as opposed to
9 having the correct figures, which would have been what was
10 actually spent directly on the project.

11 THE COURT: Well, what you received was \$150,000 and
12 then monthly payments of --

13 THE WITNESS: -- 60,000.

14 THE COURT: -- 60 or 65.

15 THE WITNESS: 60.

16 THE COURT: So those don't tell you the break-down.

17 THE WITNESS: No.

18 THE COURT: Does the quarterly report show a
19 break-down?

20 THE WITNESS: No, no break-down of the quarterly
21 report.

22 THE COURT: Let me see a quarterly report.

23 MR. EVERDELL: Your Honor, Government Exhibit 40 for
24 example.

25 THE COURT: He has one. He has handed me one.

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Gurfein - cross

1 Exhibit 21, the cover page. I see. But this isn't one that
2 was filed by you. This is an amendment to the financial
3 assistance report.

4 THE WITNESS: I apologize.

5 MR. EVERDELL: Your Honor, I think this is one.

6 THE WITNESS: I'm sorry. Wrong item.

7 THE COURT: Here is one, Government Exhibit 40. That
8 was allegedly filed January 10, 2002. And this shows the total
9 amount received and the total amount contributed by CASI --

10 THE WITNESS: Correct.

11 THE COURT: -- to this award. The total amount of
12 funds received in that quarter and the total contribution
13 allegedly made by CASI.

14 THE WITNESS: Correct.

15 THE COURT: Where did you get the figure for the
16 amount that CASI contributed?

17 THE WITNESS: Well, CASI didn't contribute anything.
18 These numbers were backed into essentially to make it look
19 right, because that's what I was told to do.

20 THE COURT: By whom?

21 THE WITNESS: By Dr. Karron.

22 THE COURT: That's true for the next quarter and next
23 quarter? Did you file a next quarter?

24 THE WITNESS: I filed for the first quarter, the
25 second quarter, the third quarter. The fourth quarter I don't

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Gurfein - cross

1 recall filing because I was not there anymore.

2 THE COURT: And they were done on all three quarters
3 in the same fashion?

4 THE WITNESS: Yes.

5 Q. Now, you were at CASI, were you not, in April of 2002,
6 correct?

7 A. Yes.

8 Q. And are you aware that an amended financial status report
9 was filed in April of 2002?

10 A. I'm not sure I remember that.

11 Q. Let me show you what's in evidence as Government Exhibit
12 2000. And I will leave 2001 up there.

13 THE COURT: 2000 and 2001.

14 Q. Do you want to review those documents, sir?

15 A. Yes.

16 Q. Do you recognize those documents?

17 A. Well, yes.

18 Q. And did you file those documents?

19 A. No, Dr. Karron filed them.

20 Q. And did you assist him in preparing them?

21 A. Yes.

22 Q. And did Joan Hayes assist in preparing them?

23 A. I don't remember that.

24 Q. Well, do you recall that you were attempting to get a
25 budget revision in November of 2001, December 2001?

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Gurfein - cross

1 A. A budget --

2 Q. -- revision.

3 A. Yes.

4 Q. And you were talking to Hope Snowden about it?

5 A. Yes.

6 Q. And Hope Snowden at some time suggested you call Jayne
7 Orthwein to discuss the changes?

8 A. I frankly don't recall that, but it's possible.

9 Q. Well, let me show you --

10 THE COURT: We don't want it's possible. You either
11 recall it or you don't recall it.

12 THE WITNESS: I don't recall it.

13 THE COURT: Anything is possible.

14 Q. Let me show you what's marked for identification as
15 Defendant's DDD.

16 DEPUTY COURT CLERK: Defendant's BBB?

17 MR. RUBINSTEIN: D, dog dog dog. See if this
18 refreshes your recollection, sir.

19 MR. KWOK: May I see it?

20 THE WITNESS: Now that I read it, I frankly don't
21 recall it that well, but, yes, I see it and --

22 THE COURT: No, just what you recall. It's only being
23 shown to you if it refreshes your recollection. Don't read the
24 document into the record. If it refreshes your recollection,
25 say yes it does refresh your recollection.

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8657KAR6

Gurfein - cross

1 THE WITNESS: It does not. I don't recall this.

2 Q. That is an e-mail that was sent from you to Dr. Karron, was
3 it not, on December 7, 2001?

4 MR. EVERDELL: Objection, your Honor. He said it
5 doesn't refresh his recollection.

6 MR. RUBINSTEIN: Well then I'm offering it into
7 evidence.

8 THE COURT: Well, wait a minutes. December 7 -- he
9 can't read it until it's admitted into evidence in the first
10 place.

11 MR. RUBINSTEIN: Correct.

12 THE COURT: But what you showed him was something that
13 was submitted sometime in April, and now you are talking about
14 December. There is no relationship in the dates of your
15 questions.

16 MR. RUBINSTEIN: I think there is, Judge.

17 THE COURT: Well, you may think there is, but this way
18 precedes the date you were inquiring about by more than three
19 months.

20 MR. RUBINSTEIN: Judge, this is an e-mail sent by this
21 witness.

22 THE COURT: Look, it may be, but you told me the date.
23 Now, I don't want to hear a speaking objection. Bring it over
24 here to the side. There is an objection about it, let's get it
25 cleared up.

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8657KAR6

Gurfein - cross

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8657KAR6

Gurfein - cross

1 (At the sidebar)

2 MR. EVERDELL: This is the document, your Honor.

3 THE COURT: I have no idea.

4 MR. EVERDELL: The defense counsel is using this to
5 try to refresh the witness's recollection. He hasn't had his
6 recollection refreshed, so it can't be used for that purpose
7 any more. He can't admit it in evidence because he doesn't
8 recognize the e-mail. There is no way to admit this into
9 evidence.

10 MR. RUBINSTEIN: He does recognize the e-mail account.
11 It's his account.

12 MR. EVERDELL: He says he doesn't remember it.

13 MR. RUBINSTEIN: No, he doesn't remember this
14 document, this e-mail.

15 THE COURT: He doesn't remember it, and he has
16 admitted already that he attempted to go above Hope Snowden on
17 one occasion to get an approval.

18 MR. RUBINSTEIN: Right. And, Judge --

19 THE COURT: He has already testified to that. This
20 doesn't add a thing.

21 MR. RUBINSTEIN: Judge, the fact of the matter is that
22 there is an entire line coming from Hope Snowden of these
23 negotiations, all the while she kept asking for revisions.

24 THE COURT: He has already testified about that.

25 MR. RUBINSTEIN: No, he didn't.

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8657KAR6 Gurfein - cross

1 THE COURT: Yes, he did testify about it,
2 Mr. Rubinstein.

3 Now, how much longer are you going to be?

4 MR. RUBINSTEIN: Probably half hour, 45 minutes.

5 MR. EVERDELL: Your Honor, my direct was how long?

6 THE COURT: Well. Sorry, we will have to go on a
7 little while longer.

8 (Continued on next page)

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8657KAR6

Gurfein - cross

1 (In open court)

2 MR. RUBINSTEIN: You do remember attempting to get a
3 budget revision near the end of 2001?

4 MR. EVERDELL: Objection.

5 THE COURT: He has already testified about that. He
6 said yes he did try to get them. He said that several times.

7 That's the court's recollection. It's the jury's
8 recollection that governs.

9 Q. How many budget revisions were submitted between December
10 2001 and February 2002?

11 A. I don't remember.

12 Q. You do recall Hope Snowden -- having conversations with
13 Hope Snowden, correct?

14 A. Yes.

15 Q. And you recall her asking you or CASI to submit revised
16 budget requests?

17 A. Well, we discussed changes in the budget, yes.

18 Q. And do you recall preparing or participating in the
19 preparation of revised budget?

20 A. Yes.

21 Q. And did you consult with Joan Hayes as to the figures, the
22 actual figures that were expended by CASI during the grant
23 period?

24 A. At which point?

25 Q. While you were negotiating with Hope Snowden to get a

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8657KAR6

Gurfein - cross

1 revised budget.

2 A. At which point?

3 MR. EVERDELL: Objection.

4 Q. Well, at what point were you negotiating with Hope Snowden?

5 A. I don't recall explicitly, but it was early on.

6 Q. At what point in your negotiation did you consult with Joan
7 Hayes about what numbers were to be utilized?

8 THE COURT: If you did.

9 THE WITNESS: I don't recall consulting with Joan
10 Hayes.

11 Q. Now, you had testified before that there were a number of
12 lawyers associated with CASI?

13 A. Yes.

14 Q. And you said there was a Mr. Bernstein?

15 A. Yes.

16 Q. You said there was a Ms. Miller?

17 A. Yes.

18 Q. And were there other attorneys?

19 A. Those are the only ones I remember.

20 MR. EVERDELL: Objection.

21 THE COURT: Those are the only ones he remembers.

22 Q. Did you ever discuss with any of those attorneys about the
23 expenses that Dr. Karron was charging towards the NIST budget?

24 MR. EVERDELL: Objection, relevance.

25 THE COURT: I will allow the question.

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8657KAR6

Gurfein - cross

1 A. I don't recall those discussions on that point.

2 Q. Did you ever talk to Hope Snowden or anybody at ATP as to
3 any specific expense that Dr. Karron was charging to NIST?

4 A. What kind of expense?

5 Q. Any kind of expense.

6 A. That's very broad. I'm trying to --

7 THE COURT: Did you ever tell him that he was spending
8 money that was not provided for in the budget and attributing
9 it to NIST?

10 THE WITNESS: I don't recall that conversation.

11 Q. As a matter of fact, Joan Hayes was Dr. Karron's personal
12 accountant, was she not?

13 A. I don't know that either. I didn't know that.

14 Q. Are you aware of whether or not Joan Hayes prepared Dr.
15 Karron's personal tax returns --

16 MR. EVERDELL: Objection.

17 Q. -- for '99, 2000 and 2001?

18 MR. EVERDELL: Objection.

19 A. I don't know that.

20 THE COURT: He doesn't know that.

21 Q. Did you ever in your discussions with Dr. Karron about your
22 view of what was allowable and not allowable, tell him that if
23 he did it his way he could wind up in jail?

24 A. I told him that he can't do just anything he wanted to do
25 like he thought he could. He thought he could spend the way he

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8657KAR6

Gurfein - cross

1 thought he could spend and not necessarily the way the rules
2 said he could spend.

3 Q. Did you ever say to him, you know, I think you might be
4 committing a crime by doing what you're doing?

5 A. Maybe not in those words but along those lines.

6 MR. RUBINSTEIN: No further questions, your Honor.

7 THE COURT: Any redirect?

8 MR. EVERDELL: Five minutes, your Honor?

9 THE COURT: Five minutes, and that's it, no more.

10 REDIRECT EXAMINATION

11 BY MR. EVERDELL:

12 Q. All right. Mr. Gurfein, you testified on cross-examination
13 about a conversation you had with defendant's brother Abe
14 Karron, is that correct?

15 A. Yes.

16 Q. That conversation related to a possible investment of
17 \$50,000 in the company?

18 A. Yes.

19 Q. Can you explain more broadly what the circumstances of that
20 conversation were?

21 A. This conversation was about my having the -- the
22 conversation was about the fact that my signature authority was
23 taken away, and I thought that was a mistake, and his response
24 was if you invest \$50,000 in the company you can have that
25 responsibility back. And I said I'm not investing \$50,000 into

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8657KAR6

Gurfein - redirect

1 this company, it is too risky.

2 In fact this is the point to be made. One of the
3 reasons for getting the ATP grant in fact is because it is
4 given to risky ventures that have difficulty raising funds in
5 the private sector, and that's one of the purposes and one of
6 the criteria for getting the award. So, I told him no, and I
7 of course did not give the 50,000, nor did I get the signature
8 authority back.

9 Q. You testified also on cross-examination about some
10 quarterly financial reports.

11 A. Yes.

12 Q. And I believe you testified that the defendant told you to
13 make it work, is that correct?

14 A. That's correct.

15 Q. Who actually signed those financial reports that were
16 submitted?

17 A. Dr. Karron.

18 Q. Did you sign those financial reports?

19 A. I did not. I had no such authority.

20 THE COURT: Are you aware of any contributions to the
21 capital of CASI that were made by anyone other than NIST?

22 THE WITNESS: No, I'm not aware of any such
23 contributions.

24 Q. You were also asked about a screen in the defendant's
25 apartment, is that correct?

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8657KAR6

Gurfein - redirect

1 A. Yes.

2 Q. You said you recalled when that was installed?

3 A. Yes.

4 Q. Do you recall how much was paid for the installation?

5 A. I think Abe Karron was paid \$3,000 roughly for that.

6 Q. And you said I believe on cross-examination in response to
7 questions about the defendant getting costs approved, that he
8 would be able to do it because NIST loved him?

9 A. Yes.

10 Q. Did you ever have any conversation with the defendant along
11 those lines?

12 A. Yes, it was a constant refrain: They love me, they'll
13 approve it.

14 MR. EVERDELL: One moment. No further questions, your
15 Honor.

16 THE COURT: Within the scope, Mr. Rubinstein.

17 MR. RUBINSTEIN: Yes.

18 RE CROSS EXAMINATION

19 BY MR. RUBINSTEIN:

20 Q. Let me show you what is marked as Defendant's FFF for
21 identification and ask you, number one, if you recognize --

22 MR. EVERDELL: Can I see it?

23 Q. -- the signatures on those documents.

24 MR. EVERDELL: Can I see the document?

25 THE COURT: You have to show it to the government

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8657KAR6 Gurfein - recross

1 first.

2 MR. RUBINSTEIN: I am, your Honor.

3 Q. Do you recognize Dr. Karron's signature on those documents,
4 sir?

5 I even have a copy for your Honor.

6 A. I recognize his signature on these documents, yes.

7 Q. And do you recognize the check -- the name on the check --
8 checks?

9 MR. EVERDELL: Your Honor, I'm going to object to
10 this. This is clearly going to be outside the scope of the
11 redirect.

12 MR. RUBINSTEIN: That's what they asked on redirect.

13 THE COURT: I asked it.

14 MR. RUBINSTEIN: That counts too, Judge.

15 THE COURT: I did it. I opened that door. Go ahead.

16 MR. RUBINSTEIN: Thank you.

17 A. Yes, I see them.

18 THE COURT: Had you ever seen them before?

19 THE WITNESS: No.

20 MR. RUBINSTEIN: We offer Defendant's FFF --

21 MR. EVERDELL: Objection.

22 MR. RUBINSTEIN: -- into evidence.

23 MR. EVERDELL: The witness has never seen them.

24 THE COURT: He can't authenticate them.

25 MR. RUBINSTEIN: He has authenticated them.

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8657KAR6

Gurfein - recross

1 THE COURT: He says they're Karron's signature, but he
2 has never seen them before.

3 Next question.

4 Q. You received personal checks from Dr. Karron, have you not?

5 MR. EVERDELL: Objection.

6 THE COURT: You're not going to be able to get them
7 in. If he has never seen these checks before, you cannot get
8 them in that way.

9 MR. RUBINSTEIN: Let me ask it this way.

10 Q. Does that refresh your recollection as to whether or not
11 you ever had a conversation with Dr. Karron about him loaning
12 CASI money during the grant period?

13 A. I do not recall that.

14 Q. By the way, the contract that you signed --

15 MR. EVERDELL: Objection.

16 THE COURT: Objection sustained. That's outside the
17 scope.

18 MR. RUBINSTEIN: This is not outside, Judge. With all
19 due respect, can I ask the question?

20 THE COURT: The way you started it, you talked about
21 something that was not in the scope, so you better get it into
22 the scope.

23 Q. When your authority was taken away in October of 2001, did
24 you resign from CASI?

25 A. No.

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Gurfein - recross

1 MR. RUBINSTEIN: No further questions.

2 MR. EVERDELL: No further questions, your Honor.

3 THE COURT: All right.

4 Jury is excused until 9:30 tomorrow morning.

5 MR. RUBINSTEIN: Just one moment. Just one moment. I
6 just found something that I just want to --

7 THE COURT: Come on, we can't wait for this.

8 MR. RUBINSTEIN: I have one document. It's going to
9 come out of the computer right now.

10 BY MR. RUBINSTEIN:

11 Q. Isn't it a fact that Dr. Karron loaned you \$4,000 on July
12 3, 2002?

13 MR. EVERDELL: Objection.

14 THE COURT: I will allow the question.

15 A. July 3, 2002?

16 Q. Correct.

17 A. I don't remember that.

18 Q. I show you this document.

19 THE COURT: Does that refresh your recollection?

20 THE WITNESS: Yeah, a little bit, but I really don't
21 recall. I don't recall this or the reason for it.

22 Oh, here is what it says. It says as a memo, "loan
23 against frozen salary." That's what it says.

24 THE COURT: Do you remember that?

25 Q. So, you remember it now?

8657KAR6 Gurfein - recross

1 A. Well, yeah, a little bit better, yeah.

2 Q. Last question. That refreshes your recollection that in
3 July 2002 Dr. Karron loaned you \$4,000, correct?

4 A. Correct.

5 THE COURT: How much?

6 THE WITNESS: \$4,000.

7 MR. RUBINSTEIN: No further questions.

8 THE COURT: All right.

9 MR. EVERDELL: No further questions, your Honor.

10 THE COURT: Excuse me?

11 MR. EVERDELL: No further questions.

12 THE COURT: All right. The jury is excused. We will
13 see you at 9:30 tomorrow morning.

14 (Continued on next page)

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8657KAR6

Gurfein - recross

1 (Jury not present)

2 THE COURT: Now, we better be in here what time? Who
3 is your next witness?

4 MR. EVERDELL: Well, your Honor, we should probably
5 discuss --

6 MR. KWOK: I think, your Honor, tomorrow we will -- if
7 Mr. Rubinstein has further cross-examination of our prior
8 witness, Belinda Riley, we can proceed with that, and then the
9 government will call its next witness Frank Spring.

10 THE COURT: Frank who?

11 MR. EVERDELL: Spring.

12 THE COURT: How many more witnesses have you got?

13 MR. EVERDELL: The continuation of Ms. Riley,
14 Mr. Spring and Bob Benedict. And I anticipate that Mr. Spring
15 and Bob Benedict will be a similar length as Mr. Gurfein. I
16 can't account for cross, but the direct will be a similar
17 length.

18 THE COURT: All right.

19 Do you have anything else to come before the court?

20 MR. RUBINSTEIN: No, your Honor.

21 MR. KWOK: No, your Honor.

22 THE COURT: All right. You better be in here at 9
23 o'clock if we have Ms. Riley. Oh, I have a telephone
24 conference at nine, so make it 9:15 as usual.

25 (Trial adjourned to June 6, 2008 at 9:15 a.m.)

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8667KAR1

1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

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4 v. S2 07 CR 541 (RPP)

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5 DANIEL B. KARRON,

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6 Defendant.

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8 June 6, 2008

9 9:15 a.m.

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10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

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12 District Judge

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14 APPEARANCES

14

15

United States Attorney for the

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Southern District of New York

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BY: STEVEN KWOK

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CHRISTIAN EVERDELL

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Assistant United States Attorneys

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RUBINSTEIN & COROZZO, LLP

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Attorneys for Defendant

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BY: RONALD RUBINSTEIN

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Also Present: Rachel Ondrik, U.S. Dept. of Commerce

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Kirk Yamatani, U.S. Dept. of Commerce

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8667KAR1

1 (Trial resumed; jury not present)

2 THE COURT: Good morning. We have a note from a juror
3 received yesterday afternoon to Judge Patterson. "I'd like to
4 speak with you about my need to follow up with my medical
5 situation. Your time would be much appreciated. Thank you."

6 I think this is Juror 7, Christine Hull. My
7 recollection is that she did not have an appointment during
8 jury selection but was trying to get an appointment for medical
9 follow-up, and I suggested she try and do it after the
10 scheduled trial, but I don't know the nature of her medical
11 follow-up. Of course if it's a life-threatening disease, I
12 would have problems. So, I guess we better have her in here
13 and listen to her, and I will decide accordingly.

14 We still have three jurors. If this case goes over
15 two weeks, we will probably lose Juror 1; and if it goes three
16 weeks, we lose Juror 8, the former alternate Juror 1. And who
17 knows what else.

18 Now, how are we coming on trial? There are two
19 witnesses the government has, is that it?

20 MR. EVERDELL: Yes, your Honor. The government after
21 we finish with Ms. Riley has two more witnesses. As I think I
22 indicated yesterday, they are along the lines of Mr. Gurfein in
23 length. One witness has some e-mails that we need to introduce
24 through him. That's Frank Spring. So that may take a little
25 longer just with the introduction of exhibits, but it would

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8667KAR1

1 take -- roughly along the lines -- the direct at least will
2 take roughly along the lines of what it took for Mr. Gurfein.

3 THE COURT: Well, we have to make progress here.

4 Let me say something while that subject is up. I am
5 concerned that the government -- as I hear the evidence that's
6 coming in, I'm not sure that so far anyway the government has
7 shown an intentional misapplication of the funds of CASI.

8 Now, if you are talking about the grant funds, that's
9 another matter, you may have something with respect to
10 misapplication of grant funds. I don't know. I haven't heard
11 all of the evidence.

12 For instance, with respect to the screen, CASI got the
13 benefit of that screen. I don't think that can be considered a
14 misapplication of funds. And if the government is proceeding
15 in that way, unless they show that the corporation didn't
16 benefit in any way by the purchase, I don't think it can be
17 considered a misapplication of CASI's general funds.

18 So, I don't know what the rest of the evidence is, but
19 I'd like to have a memorandum really by Monday morning
20 delineating, if you will, how you are going to go, because I
21 have to charge the jury. This is a very dicey situation if you
22 read cases in this area, because you have to have knowing
23 intent to misapply the funds, and it's virtually the same as
24 conversion. And I think the leading case is Morisette.

25 But you ought to have something by Monday to show that

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8667KAR1

1 I shouldn't throw this case out.

2 By the way, one of the defense exhibits for
3 identification was left here on the bench, FFF. Maybe it's
4 four Fs or three Fs. All right. Well, let me get this juror
5 in. Robert, can you ask Ms. Hull to come in.

6 How much longer do you think you are going to be with
7 Ms. Riley?

8 MR. RUBINSTEIN: Possibly most of the morning, your
9 Honor.

10 (Juror present)

11 THE COURT: Good morning, Ms. Hull. You said you
12 wanted to talk to me about your doctor's situation.

13 JUROR: Actually for a couple of years I have been
14 dealing with several problems, and I have some brain lesions
15 that they're trying to diagnose whether it's MS or some other
16 problem going on. And then after I sent my reply back to the
17 jury pool I got a result from a mammogram that I have
18 calcifications in one breast requiring biopsy. So I'm in the
19 process now of getting some specialist to look at that.

20 But this brain thing and the vestibular weakness is
21 causing me to be extremely tired. I get really exhausted, and
22 I felt yesterday I like zoned out almost like if I'm falling
23 asleep or something during the process of witness examination.

24 THE COURT: I didn't notice it.

25 JUROR: You didn't? I was stunned.

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8667KAR1

1 THE COURT: I may have been carrying on.

2 JUROR: There are just those issues going on, and I
3 feel very feel good about the process, but I don't know if I
4 can fulfill this. If I get an appointment to get the biopsy
5 done, I will have to get it taken care of.

6 THE COURT: Well, if you have to leave for the biopsy,
7 we will accommodate you.

8 JUROR: So, you don't see me kind of spacing out over
9 here or anything? Because I'm trying to pay attention, but
10 it's --

11 THE COURT: I think if you know you are going to be
12 excused if the biopsy appointment is made during the trial,
13 that you will be excused --

14 JUROR: OK, I will try my best to hang in there.

15 THE COURT: -- maybe you will have an easier mind.

16 MR. RUBINSTEIN: Sounds good to me, your Honor.

17 MR. KWOK: To the government as well.

18 THE COURT: All right. Thank you for being so frank
19 and bringing it to our attention. And if you need a break,
20 just raise your hand and you can have a break.

21 JUROR: I appreciate it, your Honor.

22 (Juror not present)

23 MR. RUBINSTEIN: We're short one defendant, your
24 Honor. I didn't pick him up this morning, because he promised
25 me he would be on time. I do want to say something about

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1 sleeping jurors. I was on a jury, and the two hardest things
2 was staying awake -- these seats are so comfortable you have no
3 idea.

4 THE COURT: Are you sure it wasn't the judge?

5 MR. RUBINSTEIN: It wasn't the judge.

6 THE COURT: Sometimes it's the attorneys.

7 MR. RUBINSTEIN: It could have been. That could have
8 been.

9 Judge, can I make the call to my client?

10 THE COURT: Sure.

11 (Continued on next page)

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8667KAR1

1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen. Thank
3 you for being so prompt. All right, your next witness.

4 You're recalling Ms. Riley?

5 MR. KWOK: Yes, your Honor.

6 BELINDA RILEY, resumed.

7 THE COURT: You are reminded you are still under oath.

8 THE WITNESS: Yes.

9 THE COURT: And the jury is reminded I have to do that
10 as a matter of court procedure. OK, thank you. Continue your
11 cross.

12 MR. RUBINSTEIN: Thank you, your Honor.

13 CROSS EXAMINATION (Continued)

14 BY MR. RUBINSTEIN:

15 Q. Ms. Riley, I believe when we suspended your testimony you
16 were looking for a record to refresh your recollection as to
17 Mr. Gurfein's salary.

18 A. I was looking for the record -- I thought I was looking for
19 the record for the grant, for the 75 percent, to show the
20 multiplication to determine the allowable portion of his
21 salary. Because the record you had had a hundred thousand
22 times 75 percent equaled a hundred thousand, and there was a
23 mathematical error. That should have said -- well, I think the
24 one I found said 133 times 75 percent was a hundred thousand,
25 which I didn't check, but it was to show that there was a

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8667KAR1 Riley - cross

1 mathematical error on that document.

2 Q. Mathematical error on what document?

3 A. The budget document that was showing 100,000 times 75 is a
4 100,000. Because 100,000 times 75 percent would be 75,000 not
5 100,000.

6 Q. Well, would \$133,333, compute 75 percent to that, would
7 that compute to 100,000?

8 A. I'm not sure. I was just trying to show that it was
9 incorrect for that, for the 100,000, that it wasn't -- it
10 should be a mathematical correct number. I didn't check the
11 other document.

12 Q. Well, are you aware that the budget was amended in this
13 case?

14 A. The budget was amended to show -- yes, the budget was
15 amended, but it didn't have -- but the amendment 2 didn't have
16 that particular attachment on it.

17 Q. Well, I show you what's been marked as Defendant's Exhibit
18 H, which is a portion of Government Exhibit 33. Do you have
19 Exhibit 33?

20 THE COURT: For identification?

21 Q. Yeah, for identification, your Honor?

22 MR. RUBINSTEIN: Yeah, for identification, your Honor.

23 (Defendant present)

24 Q. Do you recognize that document that is part of Exhibit 33
25 that's in evidence?

8667KAR1

Riley - cross

1 A. Yes.

2 Q. In fact, in the revised budget for the first year 2001 to
3 2002 Mr. Gurfein's salary as project manager was raised to
4 \$133,333, and 75 percent of that was listed as the cost to the
5 project, \$100,000, correct?

6 A. Correct. So, if Mr. Gurfein was actually paid \$133,000,
7 then the 75 percent would be applied to the amount that he was
8 actually paid versus the amount that was budgeted. He would be
9 allowed up to \$100,000 if that was 75 percent of the amount he
10 was actually paid.

11 Q. So, in fact your calculation of deducting part of
12 Mr. Gurfein's salary in the amount of \$25,000 was incorrect.

13 A. On the books and records provided by Mel, Mr. Gurfein's net
14 pay was \$100,000 times 75 percent, which would be 75,000. And
15 the withholding portion was separated into the fringe benefits
16 section, and so that portion of the gross pay is shown as an
17 adjustment in the fringe benefit section.

18 Q. When you say Mel, you mean Mr. Spitz, correct?

19 A. Mr. Spitz.

20 Q. But you didn't meet him until the latter part of 2003,
21 right?

22 A. Right. And the December 2003 report is based on his books
23 and records provided by Mr. Spitz.

24 Q. Didn't you tell us yesterday that you relied upon the books
25 and records that you received from CASI and Ms. Hayes?

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8667KAR1

Riley - cross

1 A. For the June 2003 report, the short report, I relied on the
2 records that were submitted in June.

3 For the December report I relied on the books and
4 records that were submitted by Mr. Spitz in December.

5 On some of the things I might have looked back to see,
6 if I needed additional clarification, how they were booked,
7 because the check registers provided by the June 2003 records
8 were -- you know, I didn't question whether Dr. Karron's books
9 paid the person that these checks were written to; it was just
10 the allocation of the cost between the budget categories.

11 Q. Are you saying that the reports that Mr. Spitz presented to
12 you were different than the financial reports that you had
13 previously received from CASI?

14 A. Certain of the budget categories were different. The
15 personnel categories should have been similar.

16 Q. Well, was it?

17 A. I didn't reconcile between the two sets of books. I used
18 the ones submitted by Mr. Spitz December 2003 for that report.
19 The cost claimed on the December 2003 report reconciles back to
20 the Mel Spitz books.

21 Q. But the bottom line is now that you looked at Defendant's
22 Exhibit H for identification, which is actually part of
23 Government Exhibit 33, taking that into account, then it was
24 appropriate to pay Mr. Gurfein \$100,000, correct?

25 A. No, it was appropriate to pay Mr. -- it was appropriate for

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8667KAR1 Riley - cross

1 the NIST grant to -- well, based on this document, if
2 Mr. Gurfein actually worked 75 percent of his time for the NIST
3 grant, it would be appropriate to pay him 75 percent of his
4 salary as allowable cost.

5 THE COURT: Attributable to the NIST grant.

6 THE WITNESS: Attributable to the grant. If he spent
7 75 percent of his time working on the grant, with allowable
8 things for the grant, then he would be entitled to -- the grant
9 would reimburse for up to 75 percent of his salary if he spent
10 that much time working.

11 If he only spent 50 percent of his time on allowable
12 grant activities, then even though the budget would allow 75
13 percent, he would have actually only spent 50 percent, so he
14 should only be reimbursed 50 percent of the time.

15 Q. But in your findings you found that he worked 75 percent of
16 the time and, therefore, you attributed a \$25,000 reduction in
17 allowable expenses, correct?

18 A. My audit allows for 75 percent of his time.

19 Q. Which reduced his salary from \$133,333 to \$75,000, correct,
20 according to your calculations?

21 A. No. This would be the gross salary. The 133 should be the
22 gross salary, but in my calculations the records provided in
23 December 2003 had divided the salary into net salary, and the
24 withholdings were included as part of fringe benefits, and so
25 that computation is kind of in two parts. Part of it shows up

8667KAR1

Riley - cross

1 in the fringe benefits section of the report, and part of it
2 shows up in the personnel section of the report.

3 Q. But the total comes out to \$25,000, correct?

4 A. The total adjustment comes out to -- can I have a copy of
5 my December report?

6 Q. Why don't you take a look at I believe it's Exhibit 62.

7 THE COURT: She hasn't got copies of her reports in
8 front of her?

9 All the documents she had on direct, not just one.

10 By the way, H is not in evidence. Defendant's H is
11 for identification. You have not offered it in evidence,
12 Mr. Rubinstein.

13 MR. RUBINSTEIN: I think it's part of --

14 THE COURT: I know, but --

15 MR. RUBINSTEIN: All right. We will offer H into
16 evidence, your Honor.

17 THE COURT: You say that, but the government has to
18 look at it, makes sure it is part of it, and I have to look at
19 it.

20 MR. RUBINSTEIN: OK. I gave a copy to the government,
21 your Honor, and I would offer defendant's H into evidence.

22 THE COURT: Any objection?

23 MR. KWOK: No objection.

24 THE COURT: Defendant's H is in evidence.

25 (Defendant's Exhibit H received in evidence)

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8667KAR1

Riley - cross

1 A. OK. For the chief operating officer \$25,000 is questioned,
2 plus a percentage on page 4 of 8 where it says \$8,466 is
3 questioned for payroll for the chief operating officer and
4 chief technical officer's salary --

5 THE COURT: Just slow down.

6 A. OK. The additional amount questioned for the gross salary
7 is included in the \$8,466.

8 Q. Now that you have reviewed Defendant's H, Government
9 Exhibit 33 -- withdrawn.

10 Now, you are an independent auditor for the office of
11 the inspector general, correct?

12 A. Yes.

13 Q. It's your responsibility to make sure the numbers that you
14 submit are correct, right?

15 A. Yes.

16 Q. And you have access, do you not, to all the records of the
17 NIST ATP grant, correct?

18 A. Yes.

19 Q. And you had access to what's in evidence as Government's
20 33, correct?

21 A. Yes.

22 Q. And by looking at Government's 33 in defendant's H, which
23 is part of it, is it fair to say that it was an error on your
24 part to deduct \$25,000 as allowable expenses on behalf of
25 Mr. Gurfein the chief operating officer?

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8667KAR1 Riley - cross

1 A. No.

2 Q. And on what basis do you say that?

3 A. This adjustment is based on a salary paid to Mr. Gurfein,
4 75 percent of the actual salary paid.

5 Q. What was the actual salary paid?

6 A. I think it was around 125,000.

7 Q. Isn't it according to the document that I showed you
8 \$133 --

9 THE COURT: Let's not have what you think. Go to your
10 documents and tell us.

11 MR. RUBINSTEIN: She has Exhibit H there in front of
12 her, your Honor.

13 THE COURT: I understand.

14 MR. RUBINSTEIN: Can you look at Exhibit H?

15 THE COURT: You asked her. She said it was actual
16 salary paid. This is a conclusory document. She has conducted
17 an audit; she did the bank records; she did the other records.
18 She can look at those to determine what the actual salary paid
19 was.

20 MR. RUBINSTEIN: Absolutely.

21 Q. What was the actual salary paid to Mr. Gurfein, ma'am?

22 A. The actual salary was approximately \$122,000.

23 Q. And what's 25 percent of \$122,000?

24 A. That was the gross salary. The net salary was \$100,000. 75
25 percent of the \$100,000 is the \$25,000 adjustment.

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8667KAR1

Riley - cross

1 Q. Isn't it 25 percent of the gross, ma'am, that you took off?

2 A. The additional portion, the gross, is in the fringe

3 benefits number of the \$8,466.

4 Q. Isn't it a fact that your audit found that Mr. Gurfein was

5 to be paid \$100,000, ma'am? That was the finding of your audit

6 that you just said you got from Mr. Spitz, that his gross

7 salary was \$100,000 --

8 A. His net salary was \$100,000. The remainder was included in

9 the fringe benefit break-down by Mr. Spitz.

10 Q. Fringe benefits are considered part of salary?

11 A. The withholdings were accounted for in the books that way.

12 Q. Well, withholding is a fringe benefit, correct?

13 A. The costs here should be the -- the annual salary should

14 include the withholdings as part of it in the budget.

15 THE COURT: So it's withholding, not fringe benefits

16 that accounts for the difference?

17 THE WITNESS: Yes, withholdings. But in the books and

18 records provided, the withholdings were included as a fringe

19 benefit number, and so in my audit adjustment I included them

20 where they were included for the books I was provided.

21 Q. But when you talk about fringe benefits like health

22 insurance and vacation, that's not included in the person's

23 salary, is it?

24 A. In the break-down that I was provided -- I included these

25 numbers where Mr. Spitz had included the accrual for the cost.

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8667KAR1

Riley - cross

1 Q. Ma'am, you are an auditor, correct?

2 A. Yes.

3 Q. You are familiar with accounting principles?

4 A. Yes. Withholdings would not be part of the fringe
5 benefits. But in the audit --

6 THE COURT: But they were in the books, is that what
7 you're saying?

8 THE WITNESS: They were in the books, and so I
9 adjusted where things were in the books.

10 Q. It's your take-home pay plus your withholding that makes up
11 for your salary, correct?

12 A. Correct.

13 Q. I mean if I get \$1,000 a week salary and I'm in the 28
14 percent bracket, on the books it shows that I had \$1,000 that I
15 had to pay taxes on, correct?

16 A. Can you repeat that?

17 Q. Your taxes are withheld if you are a salaried employee,
18 correct?

19 A. Correct.

20 Q. So that if you make \$1,000 a week and you are in let's say
21 the 30 percent bracket, you get a net check of \$700 a week.

22 A. Correct.

23 Q. Right?

24 A. Correct.

25 Q. And those monies that with withheld are properly in fringe

8667KAR1

Riley - cross

1 benefits, correct?

2 A. The money for withholding are part of your gross salary and
3 are often accounted for in the fringe benefits section.

4 THE COURT: But they're not part of your --

5 He asked you about fringe benefits. Are withholding
6 taxes deducted, from an auditing point of view, proper as
7 fringe benefits?

8 THE WITNESS: As an auditing point of view we normally
9 adjust them where they were claimed by the person doing the
10 books. In this instance they were claimed under fringe
11 benefits, and so we adjusted them under what they were claimed.

12 We didn't adjust personnel cost to include the fringe
13 benefits because they -- it was actually considered harder to
14 explain that way, but ...

15 Q. Do you have a schedule of the actual checks that were
16 received by Mr. Gurfein, ma'am?

17 A. Yes.

18 Q. Where is that schedule?

19 A. My database.

20 THE COURT: Exhibit?

21 MR. KWOK: I believe it's Government Exhibit 110, your
22 Honor.

23 THE COURT: Exhibit 100, is that what you're referring
24 to, Ms. Riley?

25 DEPUTY COURT CLERK: I think they said 110.

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8667KAR1

Riley - cross

1 THE COURT: 110? And 111?

2 MR. RUBINSTEIN: And can you tell us what page?

3 THE COURT: Ms. Riley, you have a way when I ask you
4 for a yes or no answer, instead of giving me a yes or no
5 answer, you give me an explanation.

6 THE WITNESS: OK.

7 THE COURT: Same goes -- give a yes or no answer.
8 Then if they ask for an explanation, give the explanation. But
9 when you answer it that way, no one knows whether you are
10 answering yes or no sometimes. Maybe they don't understand
11 you.

12 THE WITNESS: OK.

13 THE COURT: OK. Now, let's find the pages that have
14 Mr. Gurfein's salary. Can you help us there?

15 MR. KWOK: Can we direct the witness to a page?

16 THE COURT: Yes.

17 MR. RUBINSTEIN: Please.

18 MR. KWOK: Could I direct your attention to page 36 of
19 44 in Government Exhibit 110.

20 THE WITNESS: OK.

21 Q. Are you looking at that page, ma'am?

22 A. I do.

23 Q. And you have a total of the net amount of Mr. Gurfein's
24 salary?

25 A. That shows that --

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8667KAR1

Riley - cross

1 Q. Do you see the top of the page, ma'am?

2 A. Sorry. What page was that?

3 Q. Pardon?

4 A. What page?

5 Q. It's 36 of 44 in Exhibit -- ma'am, could you look at the
6 top of that page, page 36 of 44.

7 A. Yes.

8 Q. And is that a schedule of Mr. Gurfein's net, the checks
9 that were actually written to Mr. Gurfein?

10 A. No, it was a check that I had -- the database I had
11 created, so I had thought that the net checks should be there.

12 Q. Pardon?

13 A. It's the database that I had entered all the checks from
14 Dr. Karron.

15 Q. So, that's not a Spitz document.

16 A. No, that's not Spitz documents.

17 Do we have Spitz?

18 Q. Well, from the checks that you saw from CASI that you put
19 in this exhibit that's in evidence, what is the total amount of
20 net pay received by Gurfein?

21 A. \$70,000 in checks written.

22 Q. Not 100,000, right?

23 A. No.

24 Q. You just testified under oath that it was 100,000 that he
25 received in net salary, correct?

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8667KAR1

Riley - cross

1 A. According to the records provided by Mel Spitz. So, there
2 might have been some adjusted journal entries.

3 Q. But not according to the records you provided.

4 A. Well, they were just based on the checks written.

5 Q. Yours is based on the actual checks.

6 A. The actual checks written to him.

7 Q. And you have those checks, do you not, or copies of those
8 checks?

9 A. Yes, I do.

10 Q. I mean you have access to any bank statement and copies of
11 any checks that were written, cashed on any account in this
12 case, correct?

13 A. Written on --

14 MR. KWOK: Objection.

15 THE COURT: Objection overruled.

16 Q. You have authority to subpoena -- if you didn't get the
17 actual records from CASI, you can subpoena a bank, Chase Bank,
18 right, to get the records that they have, right?

19 A. We're talking about bank records for CASI?

20 Q. Talking about the checks --

21 A. The checks for CASI.

22 Q. The checks of CASI.

23 A. Yes.

24 Q. And did you do a bank reconciliation on the checks that
25 were drawn against the four CASI accounts that you mentioned

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8667KAR1

Riley - cross

1 yesterday?

2 A. Yes.

3 Q. And is it fair to say that the schedule that you have here
4 on page 36 of 44 of Exhibit 110 was computed on the basis of
5 your analysis of those checks?

6 A. Yes.

7 Q. So, now do you concede that your number before of \$100,000
8 in net pay to Mr. Gurfein was inaccurate?

9 THE COURT: Net pay?

10 MR. RUBINSTEIN: Yeah, that's what she said, the
11 100,000 was the net pay.

12 THE COURT: Did you say that?

13 MR. RUBINSTEIN: Or something like 122,000.

14 THE WITNESS: Net pay, yes, based on Mr. Spitz's
15 records.

16 THE COURT: Well, what was the net pay that you put in
17 your books, in your audit?

18 THE WITNESS: From my audit the net pay was \$100,000.

19 THE COURT: But yet your audit says that he only got
20 70,000 on page 36 of 44.

21 THE WITNESS: It says that 25 percent of the --

22 THE COURT: Well, 36 of 44 says what?

23 THE WITNESS: 36 of 44 says 70,000 was net pay.

24 THE COURT: Right.

25 THE WITNESS: And that came from the actual deposit.

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8667KAR1

Riley - cross

1 THE COURT: Right. And your audit report says net pay
2 was 100,000?

3 THE WITNESS: Well, they are from different sources.
4 The audit report is from Mr. Spitz's record, so it may have
5 adjusting journal entries.

6 THE COURT: I don't follow. Why would you use
7 Mr. Spitz's record when you have your own record of what it is?

8 THE WITNESS: Because I didn't create them until
9 later, until after the audit was done.

10 THE COURT: You didn't create what?

11 THE WITNESS: This record, the 36 of 44, until after
12 the audit was done. I did not analyze the canceled checks
13 until asked to by investigations.

14 THE COURT: All right.

15 THE WITNESS: So they were done at different times.

16 THE COURT: So, it's your testimony that based on your
17 understanding of Mr. Spitz's records there was a \$25,000
18 overpayment to Mr. Gurfein.

19 THE WITNESS: Yes.

20 THE COURT: But when you actually checked the records
21 later after the audit was done, and you found out in fact it
22 wasn't 100,000.

23 THE WITNESS: Correct.

24 THE COURT: So, the 100,000 determination by you was
25 incorrect --

8667KAR1 Riley - cross

1 THE WITNESS: Yes.

2 THE COURT: -- based on the records.

3 THE WITNESS: Based on the canceled checks, yes.

4 THE COURT: All right.

5 Q. So, is it fair to say today, June 6, 2008, that the
6 disallowance of the \$25,000 in salary of Mr. Gurfein was an
7 error in the calculations?

8 MR. KWOK: Objection.

9 THE COURT: Objection sustained. It's not fair to say
10 that. It was based on an incorrect conclusion possibly.

11 MR. RUBINSTEIN: OK, incorrect conclusion.

12 THE COURT: But based on the records -- but correct
13 under the records that she had received from Mr. Spitzer or
14 whatever his name is.

15 Q. That's an acceptable auditing technique, ma'am, to use the
16 representative of the taxpayer, their records?

17 A. Yes.

18 Q. That's an acceptable auditing principle?

19 A. Yes, we use their records.

20 Q. Is that an audit? There are principles of auditing, are
21 there not, ma'am?

22 A. Yes.

23 Q. And is it your testimony that you do not do any independent
24 evaluation of records submitted to you?

25 A. I sampled certain transactions in Mr. Spitz's books.

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Riley - cross

1 THE COURT: Is an audit a review of the records of the
2 company you're reviewing on according to what they say, or does
3 an auditor have to go back to the underlying records to
4 determine what the truth is?

5 THE WITNESS: We test the records that they provide
6 us, and if we think that they do a fair and accurate
7 representation of the expenses, then we start our audit using
8 their records and make adjustments.

9 So, in this case I would have looked at the records
10 provided from Mr. Spitz, determined that NIST only agreed to
11 pay 75 percent of what Mr. Gurfein's salary was, and so my
12 audit adjustment would be the books showed he was paid 100,000
13 he was only entitled to ATP reimbursement of 75 percent of
14 that, so CASI would have paid 25,000 to Mr. Gurfein and NIST
15 would have paid the 75,000 to Mr. Gurfein based on Mr. Spitz's
16 records.

17 Q. And Spitz's records show that the gross, according to you,
18 was 100,000, correct?

19 A. The net salary was 100,000.

20 Q. Do you have those records here?

21 A. Mr. Spitz's records?

22 Q. Yes, that you say that Spitz said that the net salary was
23 \$100,000.

24 A. Yes.

25 THE COURT: Do you have the records here?

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Riley - cross

1 THE WITNESS: I have computer copies.

2 THE COURT: A computer copy of Mr. Spitz's records?

3 THE WITNESS: Yes.

4 THE COURT: But not in front of you.

5 THE WITNESS: Not in front of me.

6 Q. And you didn't use Spitz's figures for Exhibit 110,
7 correct?

8 THE COURT: For exhibit --

9 MR. RUBINSTEIN: 110, the one she is talking about.

10 THE COURT: She said that 110 was created after the
11 December audit.

12 MR. RUBINSTEIN: But if she --

13 Q. If you didn't use these figures in 110 for your audit, how
14 are they relevant to this case?

15 A. Since they were the --

16 THE COURT: Well, that's not a good question for her
17 to answer. That's not a question for her.

18 MR. RUBINSTEIN: All right. Well, I'm not going to --

19 THE COURT: You can argue that on summation.

20 MR. RUBINSTEIN: I have gone far enough on this issue.

21 Q. The bottom line, ma'am, is that between Mr. Gurfein and Dr.
22 Karron, you disallowed a total of \$71,550, right?

23 THE COURT: Based on Mr. Spitz's records. Is that
24 right?

25 THE WITNESS: Yes, from Mr. Spitz and Dr. Karron,

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Riley - cross

1 yes -- I mean for Gurfein and Dr. Karron.

2 Q. And Spitz' records indicated that Dr. Karron wasn't
3 entitled to a hundred percent of his \$175,000 salary?

4 A. The NIST budget allows that a salary can be up to. It's
5 not in stone the allocations of time worked. These are
6 estimates of percentage of projected time on project.

7 Q. The budget permitted \$175,000 for Dr. Karron, correct?

8 A. The budget would have permitted a hundred percent of the
9 time for Dr. Karron if he spent a hundred percent of his time
10 working on the ATP project.

11 Q. How many hours a week is he supposed to work on the ATP
12 project to justify his \$175,000 salary?

13 A. He is a salaried employee, so it doesn't amount to hours.
14 It is the percentage of time worked. So, if he works --

15 THE COURT: Not ifs. What were you told by
16 Mr. Spitz's records?

17 THE WITNESS: OK.

18 THE COURT: What did Mr. Spitz tell you? What did
19 Mr. Spitz's records -- what did he tell you?

20 THE WITNESS: Mr. Spitz's records would have shown a
21 hundred percent of his time. Well, if Spitz's records -- just
22 had total salary.

23 Q. Pardon?

24 A. Mr. Spitz's records showed net salary under the personnel
25 section.

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Riley - cross

1 Q. So, you relied upon Mr. Spitz's records for Gurfein, but
2 you didn't rely upon Mr. Spitz's records for Dr. Karron?

3 A. No, the -- Dr. Karron is the CEO of CASI and is also caring
4 about the project. Mr. Gurfein's responsibilities included
5 fundraising and project managing, strategic planning. Dr.
6 Karron would have made -- as owner of CASI and interested in
7 the project -- would have had discussions with Mr. Gurfein
8 concerning those issues, and those issues, since they are not
9 allowable costs, the time he would have spent discussing those
10 kinds of issues would not be allowable charges to the ATP
11 project.

12 So, he didn't really -- he really wasn't spending a
13 hundred percent of his time, and so as auditors, based on
14 interviews --

15 THE COURT: How did you determine he wasn't spending a
16 hundred percent of his time?

17 THE WITNESS: Based on --

18 THE COURT: For this audit report.

19 THE WITNESS: Based on -- just on what -- that it's a
20 company, I guess professional judgment.

21 THE COURT: What?

22 THE WITNESS: Professional judgment. Knowing the type
23 of business, knowing their requirements, that a hundred percent
24 of the time for the CEO is not on just project time.

25 THE COURT: It wasn't based on anything that Mr. Spitz

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8667KAR1

Riley - cross

1 or Dr. Karron told you or anything of that sort? It's just
2 professional judgment.

3 THE WITNESS: Right. And I had asked Dr. Karron about
4 things, various employees, and, you know.

5 THE COURT: And what?

6 THE WITNESS: And observed things that people did.

7 THE COURT: You mean your observations during the
8 audit?

9 THE WITNESS: Yeah, and things discussed during the
10 audit.

11 Q. So, it's your testimony that if I'm a salaried -- if a
12 person is a salaried employee, and they work 80 hours a week on
13 one project, and they spend two hours of that 80 hours on
14 non-direct activities, you are going to deduct part of their
15 salary as an allowable expense?

16 A. As a NIST-reimbursable expense for -- they're being
17 reimbursed for -- yes.

18 If they're not working on the NIST project, and their
19 duties aren't related to the NIST project, then only the
20 portion that's related to the project cost is allowable.

21 Q. Well, what if they had two jobs, they had a NIST job and at
22 night they taught at some university, and now they only work 40
23 hours a week?

24 MR. KWOK: Objection.

25 THE COURT: Objection sustained.

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8667KAR1

Riley - cross

- 1 Q. Is it fair to say that you are not the last word on what's
2 allowable and what's not allowable in the OIG's office?
3 A. During resolution of the audit?
4 Q. In the whole process that a company can dispute your
5 interpretations, correct?
6 A. Correct, it goes through a resolution process.
7 Q. And are you part of that resolution process?
8 A. Yes.
9 Q. Do you make the final decision at that resolution process?
10 A. The grants office makes the final decision.
11 Q. The grants office?
12 A. Um-hum.
13 Q. The grants office of what?
14 A. NIST ATP.
15 Q. So they have a right in the final resolution to approve any
16 of these expenses, correct?
17 A. Yes, they do.
18 Q. Now, you talked about fringe benefits. Did you make any
19 determination in your audit as to other fringe benefits other
20 than the payroll tax, tax withholding? Did you make any
21 determinations as to any other fringe benefits, whether they
22 were allowable or not?
23 A. Yes.
24 Q. Because actually you are making a determination in your
25 analysis of what is allowed, correct?

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Riley - cross

1 A. Yes.

2 Q. As distinguished from what is allowable.

3 A. I make the determination for what is allowable.

4 Q. Well, did you review any materials to determine what was an
5 appropriate fringe benefit for the CASI organization?

6 A. What is your -- I don't understand that question.

7 Q. Did you review anything to determine in your mind what
8 fringe benefits would be, like let's say medical, what medical
9 fringe benefits should be allowable?

10 A. Yes.

11 Q. And what did you review?

12 A. He had some kind of plan document I think from '96 that
13 didn't mention these kinds of benefits.

14 THE COURT: What did you say?

15 THE WITNESS: He had a document that didn't mention --
16 I don't think it mentioned fringe benefits or mentioned all of
17 these.

18 THE COURT: Sorry. What? I can't hear you.

19 THE WITNESS: He had a plan document or an office
20 policy document.

21 THE COURT: Which was it?

22 THE WITNESS: Office policy. That's the only document
23 that I reviewed that mentioned -- that was in effect during the
24 period of the grant.

25 THE COURT: That's what you were guided by here?

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8667KAR1

Riley - cross

1 THE WITNESS: And I reviewed -- well, I reviewed the
2 expense records, the ledger records.

3 THE COURT: Provided to you by?

4 THE WITNESS: Mel Spitz, Mr. Spitz.

5 THE COURT: Go ahead. What else?

6 THE WITNESS: Everything else was the log.

7 THE COURT: What? The log?

8 THE WITNESS: Yeah, the criteria that was provided
9 by --

10 THE COURT: What criteria?

11 Q. What criteria?

12 A. Well, ATP guidance or whatever criteria would have to do
13 with fringe benefits.

14 Q. Isn't the company's policies, even if they're not written,
15 aren't they to be considered in making that determination what
16 the practice is of that organization?

17 A. It didn't mention those kinds of benefits in the policy
18 that I saw.

19 THE COURT: The office policy.

20 THE WITNESS: In the office policy.

21 Q. That's not the question.

22 A. OK.

23 Q. You say you saw a document from 1996, correct?

24 A. It was an old document. I'm not sure. I don't recall the
25 exact year but it was --

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8667KAR1

Riley - cross

1 Q. Did you ask --

2 THE COURT: This document, what is it? What are we
3 talking about? Are you talking about the office policy manual?
4 Is that what you mean by the document, Mr. Rubinstein?

5 MR. RUBINSTEIN: That's what she indicated.

6 THE COURT: All right. But let's be sure we are
7 talking about what we're talking about.

8 Q. The document that you say that you saw, did you discuss
9 whether or not that was still in effect in the year 2003 when
10 you did the audit?

11 A. They were revising it in 2003.

12 Q. And did they advise you they were revising it?

13 A. Yes, that they were revising it.

14 THE COURT: And who gave you the document?

15 THE WITNESS: I don't know if I have a copy. I don't
16 know that they had finished -- I don't think I got a copy. I'm
17 not sure I have a copy of that document.

18 THE COURT: Which document?

19 THE WITNESS: The revised document.

20 THE COURT: I'm not asking you about the revised
21 document. Who handed you the document that you did see?

22 THE WITNESS: I don't recall. I think I got that one
23 in June, but I don't recall specifically.

24 THE COURT: When? From whom is what I asked, not
25 when.

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8667KAR1 Riley - cross

1 THE WITNESS: I don't know whom.

2 THE COURT: I asked from whom.

3 THE WITNESS: I don't remember.

4 THE COURT: Listen to the question before you answer,
5 and try and give a yes or no answer, please.

6 THE WITNESS: I don't remember whom.

7 THE COURT: OK.

8 Q. Now, you were informed that they were working on a revised
9 manual, is that correct?

10 A. Yes.

11 Q. And were you advised that the revised manual would have the
12 fringe benefits that were in place in CASI from before the
13 grant?

14 THE COURT: Sorry?

15 Q. That the revised --

16 THE COURT: Question withdrawn. Start over again,
17 Mr. Rubinstein.

18 Q. You had discussions that they were working on a revised
19 manual, correct, including fringe benefits?

20 A. Yes, I knew that they were revising their manual.

21 Q. And did you question as to what policies had been in effect
22 prior to the ATP grant?

23 THE COURT: Forget about the revised manual now. He
24 is asking you did you ask what policies were in effect prior to
25 the ATP grant. Did you ask that question?

8667KAR1

Riley - cross

1 THE WITNESS: I don't recall.

2 Q. Is it a fact that under the auditing procedure you can
3 inquire as to fringe benefits such as medical, as to what the
4 company's policy was and what it had done previously?

5 A. That is one consideration.

6 THE COURT: Sorry. What?

7 THE WITNESS: Yes. Yes.

8 Q. And did you inquire of anyone -- well, did you inquire of
9 Dr. Karron what the practice of CASI was prior to getting the
10 ATP grant as to fringe benefits?

11 A. I don't recall.

12 Q. Well, let me show you what's been marked for identification
13 as Defendant's L and ask you if you have ever seen that
14 document before.

15 A. I don't recall seeing this document before.

16 Q. Now, did you review the contract of Mr. Gurfein when you
17 were reviewing his salary?

18 A. Yes.

19 Q. And let me show you what's been marked for identification
20 as Defendant's K.

21 THE COURT: 3505 what?

22 MR. RUBINSTEIN: It's in 3505. It doesn't have a
23 letter but it's before C. 3505, I guess it must be in the B
24 part.

25 Q. Is that a document that you reviewed which was a CASI

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8667KAR1 Riley - cross

1 document, ma'am?

2 A. Yes.

3 Q. As a matter of fact, you had a copy of that, did you not?

4 A. Yes.

5 Q. As a matter of fact, you turned your copy over to the
6 prosecution yesterday, correct?

7 A. Yes.

8 MR. RUBINSTEIN: We offer Defendant's K into evidence.

9 MR. KWOK: No objection.

10 THE COURT: Defendant's K is admitted into evidence.
11 Can I see a copy?

12 MR. RUBINSTEIN: I gave you one, Judge.

13 (Defendant's Exhibit K received in evidence)

14 THE COURT: This is an employment agreement --

15 MR. RUBINSTEIN: Yes.

16 THE COURT: -- between Mr. Gurfein and Computer Aided
17 Surgery, dated as of October 1, 2001, signed on December 26,
18 2001.

19 Q. And this was provided to you as part of the audit, correct?

20 A. Yes.

21 Q. To show -- well, I will withdraw that. This contract
22 provides for fringe benefits, does it not?

23 A. Sorry. What?

24 Q. This document provides for fringe benefits?

25 A. Yes.

8667KAR1 Riley - cross

1 Q. And will you read to the jury what the fringe benefits
2 provided by CASI were.

3 A. On page 3, the executive will be entitled to participate in
4 all benefit plans or programs of the company currently in
5 existence or to be established, including medical, dental, life
6 insurance, retirement, pensions, vacations, sick leave and
7 holidays.

8 (Continued on next page)

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866zkar2

Riley - cross

1 BY MR. RUBINSTEIN:

2 Q. Thank you. Now, you also -- you also disallowed certain
3 salary of other people, is that correct?

4 A. Yes.

5 Q. And you disallowed salary of Abe Karron?

6 A. Yes. Well --

7 THE COURT: I'm sorry, are you changing your --

8 A. Abe didn't have salary.

9 THE COURT: She say Abe didn't have a salary.

10 Q. Did Abe receive any monies from CASI?

11 A. For the projection, projector.

12 THE COURT: For what?

13 THE WITNESS: He did, the projector and the screen.

14 He didn't have -- wasn't salaried.

15 THE COURT: If you answer first yes or no, that helps.

16 THE WITNESS: Oh, sorry.

17 Q. And that was an allowable expense, correct?

18 A. I'm sorry, what?

19 Q. That was allowable?

20 A. What was allowable?

21 Q. The money paid to Abe Karron?

22 THE COURT: What did you say?

23 THE WITNESS: What money paid to Abe Karron?

24 Q. The thousand dollars and change?

25 A. I think that was questioned under equipment, maybe.

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Riley - cross

1 Q. Did you allow or disallow that amount?

2 THE COURT: Were any of these allowed or disallowed or
3 were they questioned, any of these expenses?

4 What was your role here? Were you disallowing or were
5 you recommending or were you questioning; what were you doing?

6 THE WITNESS: We --

7 THE COURT: You.

8 THE WITNESS: Yes. We questioned, we questioned the
9 cost and recommend that it be disallowed.

10 THE COURT: Okay.

11 Q. And you recommended in this report that over \$500,000 would
12 be disallowed, correct?

13 A. Correct.

14 THE COURT: This is the December report?

15 MR. RUBINSTEIN: The audit was in December --
16 actually, it was filed I believe in March of 2004.

17 Q. Is that correct, Ms. Riley?

18 A. Correct.

19 THE COURT: All right.

20 Q. Now, there was an employee Miss Winter?

21 A. Yes.

22 Q. And did you allow or disallow part of her salary?

23 A. Disallow.

24 Q. And how much of her salary was disallowed.

25 A. 25 percent, approximately.

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Riley - cross

1 Q. What basis was -- Ms. Winter was a bookkeeper at CASI
2 correct?

3 A. Correct.

4 Q. And on what basis was 25 percent disallowed?

5 A. On the basis that she also kept the books for the business
6 CASI, and so she, she worked on -- so NIST would reimburse her
7 total salary.

8 THE COURT: I couldn't hear you.

9 THE WITNESS: NIST would only reimburse the portion of
10 the time that she worked for NIST.

11 THE COURT: I see. And the rest was for the
12 corporation?

13 THE WITNESS: Theory Corporation.

14 THE COURT: Theory?

15 THE WITNESS: Theory Corporation.

16 Q. Wasn't her job as a bookkeeper for CASI?

17 A. Yes.

18 Q. Weren't employee salaries included in the budget?

19 A. Only the portion of the time that would be attributable to
20 NIST work would be reimbursed by the grant.

21 Q. But there was only one project going on at CASI, correct?

22 A. Correct, but --

23 Q. So 100 percent of her time was being spent on CASI-related
24 items, correct, ATP related items?

25 A. No.

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Riley - cross

1 Q. You also -- she also had some fringe benefits, did she not?

2 A. Yes.

3 Q. What kinds of fringe benefits did she have?

4 A. Medical expense and child care.

5 Q. And you disallowed her child care, correct?

6 A. Correct.

7 Q. That was a fringe benefit of CASI, correct?

8 A. Correct.

9 Q. And you decided that --

10 THE COURT: Was it in the manual or not?

11 THE WITNESS: It was not in the manual. That was
12 provided to me originally.

13 THE COURT: Were you given another one later?

14 THE WITNESS: Just the one that I was -- just the
15 revised one I just received now.

16 THE COURT: You were, you were given that?

17 THE WITNESS: No, no. This is -- no, I wasn't given
18 the revised manual.

19 THE COURT: You were given the revised manual?

20 THE WITNESS: No, I did not, did not receive the
21 revised manual.

22 THE COURT: Then why did you answer yes?

23 THE WITNESS: I just got it -- I said yes, just now, I
24 received the revised manual.

25 THE COURT: What?

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866zkar2 Riley - cross

1 THE WITNESS: Because I just got this revised manual,
2 yes. Not the time of the audit.

3 THE COURT: I didn't --I'm asking you about what you
4 did at the time you did it.

5 THE WITNESS: Yeah, I did not receive the revised
6 manual at that time.

7 THE COURT: All right. So on the information you had,
8 you decided to not allow child care?

9 THE WITNESS: Correct.

10 THE COURT: Okay.

11 Q. Did you discuss with anybody, with Dr. Karron, as to the
12 fringe benefit policy related to child care for Miss Winter?

13 A. I don't recall.

14 THE COURT: That revised manual isn't in evidence, is
15 it?

16 MR. RUBINSTEIN: No, your Honor.

17 THE COURT: You're relying on something that's not
18 even in evidence yet.

19 THE WITNESS: Oh, okay.

20 THE COURT: All right.

21 THE WITNESS: All right.

22 THE COURT: Let's get it together.

23 THE WITNESS: Okay.

24 MR. RUBINSTEIN: Your Honor --

25 MR. KWOK: Objection.

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Riley - cross

1 THE COURT: Objection -- objection sustained. I don't
2 know what, what you're objecting to. It may have been my
3 remarks, so maybe.

4 MR. KWOK: No, I'm objecting to the --

5 THE COURT: I'll sustain it, I'll sustain that also.

6 MR. RUBINSTEIN: You want to strike your remarks, your
7 Honor?

8 THE COURT: Well --

9 Q. Now, CASI wrote checks for rent, correct?

10 A. Correct.

11 Q. Now, rent is ordinarily not permitted as a direct cost,
12 correct?

13 A. Correct.

14 Q. In a situation where the sole -- and the reason, is the
15 reason for that because normally a business is conducting other
16 businesses other than the grant project and, therefore, it's
17 hard to attribute what portions would be applicable?

18 A. It's -- it would need to be in the budget.

19 Q. There's others -- there's a provision for others in the
20 budget, correct?

21 A. Correct.

22 Q. And you could increase that category by up to 10 percent of
23 the 800,000 in the first year, correct?

24 A. Correct.

25 Q. Now, but going with the -- so that is an issue that --

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Riley - cross

1 actually whether something is an indirect or a direct cost is
2 something that could be negotiated with the grant offices,
3 right?

4 MR. KWOK: Objection.

5 Q. Well, in the audit resolution you could negotiate whether
6 or not that would be a direct cost as opposed to an indirect
7 cost?

8 A. Rent would be considered an indirect cost.

9 Q. Generally speaking, right; is that correct?

10 A. Correct.

11 Q. But the CFR that you're governed by says that you deal on a
12 case-to-case basis?

13 A. Correct.

14 Q. Now, let's assume for these questions that the rent was, in
15 fact, not allowable; it was in fact an indirect cost, okay.

16 Follow that?

17 A. Not allowable -- yes.

18 Q. I'm assuming that you're correct, okay?

19 A. I'm correct.

20 Q. The rent attributable to the ATP grant would start when?

21 MR. KWOK: Objection.

22 A. Start?

23 Q. Yeah, when would it start? If rent was paid --

24 A. If rent was allowable?

25 Q. No, no. If it was paid, it was an expense. It's not

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Riley - cross

1 allowable, it's an expense that's paid, but not allowable.

2 MR. KWOK: Objection.

3 Q. Let me ask you --

4 THE COURT: I don't understand the question.

5 Q. Let me ask you this, was there --

6 THE COURT: I don't understand the question. Reframe
7 the question.

8 Q. Okay. When you started to audit CASI, did you ascertain
9 what the financial condition of CASI was before the grant
10 started in October of 2001?

11 A. Yes.

12 Q. And is it fair to say that CASI Corporation was in debt in
13 excess of between 100 and \$200,000 at that time?

14 A. I don't know how much they were in debt.

15 Q. Well, in fact --

16 THE COURT: You don't know whether they were in debt?

17 THE WITNESS: They were in debt. I don't know the
18 amount.

19 Q. And CASI, prior to the ATP grant, was in fact paying rent
20 to Dr. Karron for use of that portion of the apartment at 300
21 East 33rd Street?

22 THE COURT: Before the grant?

23 MR. RUBINSTEIN: Before the grant.

24 THE COURT: Is that your knowledge?

25 THE WITNESS: No. My knowledge is they took -- they

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866zkar2 Riley - cross

1 paid themselves nine months of back rent when they first got
2 the check, CASI, paid, took --

3 Q. Go ahead.

4 A. The back -- they paid, they paid back rent with the first
5 drawdown of NIST funds for nine months, \$18,000.

6 Q. And they listed, they listed what months the rent was for,
7 correct?

8 A. Correct.

9 Q. I mean, there is a memo on each check, right?

10 A. Yes. Now there is.

11 Q. Pardon?

12 A. Yes.

13 Q. And the memo says what month that \$2,000 check was payment
14 for?

15 A. Yes.

16 Q. Now, did you do any --

17 THE COURT: To whom was the check payable?

18 THE WITNESS: Dr. Karron.

19 THE COURT: What?

20 THE WITNESS: Dr. Karron.

21 Q. And if he received rent money, then he would have to report
22 that as income on his tax return, correct?

23 THE COURT: Objection --

24 MR. KWOK: Objection.

25 THE COURT: -- sustained.

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866zkar2 Riley - cross

1 Q. Well, are you aware -- did you examine Dr. Karron's tax
2 returns --

3 MR. KWOK: Objection.

4 Q. -- as part of this audit?

5 THE COURT: As part of the audit, did you look at his
6 tax returns?

7 THE WITNESS: I don't recall if I have his tax returns
8 or not.

9 Q. When, when was the last -- well, if you're correct that --
10 so the first nine checks, \$18,000 was paid for an expense that
11 was incurred prior to the grant, right?

12 A. Correct.

13 Q. And it wouldn't matter if you called it rent or you bought
14 a piece of equipment unrelated to the grant prior to the grant,
15 it was an expense that he -- it was a debt that he was paying
16 off, correct?

17 A. Correct.

18 Q. Now, he would be entitled, would he not, to increase his
19 salary under the rules by as much as 10 percent without prior
20 approval?

21 A. Salary would probably need to be prior approval. The
22 personnel salaries total may not need prior approval.

23 Q. May?

24 A. But would need -- the -- if he were using the 10 percent
25 rule for -- and you had additional salaries of 10 percent. But

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Riley - cross

1 for a specific salary, you know, if things, if things changed
2 with the named people, that's supposed to get an approval from
3 the grant people.

4 Q. Isn't he allowed to get 10 percent of the \$800,000 to use
5 without any budget approval for any line item that had already
6 been established; isn't that the rule?

7 A. He can reallocate ten percent of the line items if it's --
8 if it's allowable NIST cost, attributable to the grant.

9 Q. His salary was allowable, correct?

10 A. At the amount they approved.

11 Q. But he could, under the 10 percent rule, he could increase
12 that salary, correct?

13 A. I'm not sure about that.

14 Q. He could increase -- could he increase equipment?

15 A. Equipment he could.

16 Q. Could he increase fringe benefits?

17 A. Fringe benefits, allowable fringe benefits to the -- it
18 would be able to increase.

19 Q. That payment -- by the way, Dr. Karron had, you said he had
20 four accounts, right?

21 A. Four checking accounts.

22 Q. Four checking accounts. And he had a different colored
23 check for each checking account, correct?

24 A. I don't know.

25 Q. You saw the checks, did you not?

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Riley - cross

1 A. I saw copies of the checks.

2 Q. They were not in color?

3 A. No.

4 Q. These rent checks were paid out of the CASI, Inc. account,
5 correct?

6 A. I don't recall, but that could be true.

7 Q. Now, you have a schedule as to the rent checks, do you not?

8 THE COURT: Were these checks to the landlord? Rent
9 checks, was there a landlord here or is it -- or is it a --

10 MR. RUBINSTEIN: Well, Dr. Karron was the landlord,
11 your Honor.

12 Q. Now, which --

13 THE COURT: I don't know. The witness then should
14 testify, Mr. Rubinstein.

15 MR. RUBINSTEIN: Okay.

16 Q. You have this on the schedule in the 3500 material,
17 correct? And I direct your attention to 3500 ten -- 110, page
18 39 of 44?

19 MR. KWOK: Your Honor, I believe that's government
20 Exhibit 110.

21 MR. RUBINSTEIN: Yeah, government exhibit. I'm sorry,
22 Judge.

23 THE COURT: Before you get into that, just so we're
24 clear, Ms. Riley, was this created after your -- was this
25 document 110 created after your audit was, December, was

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Riley - cross

1 created?

2 THE WITNESS: Yes, yes.

3 THE COURT: After the report was created?

4 THE WITNESS: Yes.

5 THE COURT: All right. So you know, approximately,
6 when it was created?

7 THE WITNESS: The data base was created in 2004, 2005
8 but this specific document was created on May 28. It's got the
9 date on here.

10 THE COURT: I see.

11 Q. Now, by looking at that document, ma'am, could you use that
12 to refresh your recollection as to how -- the rent was \$2,000 a
13 month, correct?

14 A. Correct.

15 Q. And by looking at that document, can you tell the jury how
16 many payments were made of \$2,000 prior to the start of the
17 grant on October 1?

18 THE COURT: How many payments were made?

19 Q. Yeah, attributable to rent that was for periods prior to
20 the start of the grant of January -- of October 1, 2001?

21 THE COURT: Do you have a page to refer to?

22 MR. RUBINSTEIN: Yes. It's page 39 of 44. in exhibit,
23 government Exhibit 110, your Honor.

24 THE COURT: All right.

25 Q. Do you have that, ma'am?

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Riley - cross

1 A. Yes.

2 THE COURT: By the way, what is GL?

3 THE WITNESS: The general ledger, one of the general
4 ledgers.

5 Q. And by reviewing that document, how many of the rent
6 payments were made after for time periods after October 1st,
7 2001, start --

8 A. After -- how many checks were made for the period starting
9 October 1, 2001?

10 Q. When the grant started.

11 A. When the grant started, how many payments were made, after
12 that?

13 Q. Right.

14 A. There's 21 payments made during the grant period and nine
15 payments --

16 Q. 21?

17 A. -- for periods prior to the --

18 Q. During the grant period -- excuse me, ma'am. Did you say
19 during or before the grant period?

20 A. 21 that were paid during the grant period, and nine were
21 made for a period prior to the grant award.

22 Q. Isn't it a fact that the -- if you start at the, where it
23 says rent on office, 30 detailed records, correct?

24 A. Yes.

25 Q. And you start out, the first check was to pay the rent owed

866zkar2 Riley - cross

1 for January, 2000, correct?

2 A. Correct.

3 Q. And you follow down the next number of checks, there is a
4 total of nine checks that were attributable to rent owed from
5 2000, correct?

6 A. Yes.

7 Q. And then that's all prior to the grant, correct?

8 A. The nine, the nine -- the first nine were prior to the
9 grant.

10 Q. And then you have the next check is January '01, going down
11 to the bottom of that page?

12 THE COURT: Wait a minute. After the first nine
13 checks dated October 26, 2001?

14 MR. RUBINSTEIN: No, your Honor.

15 THE COURT: The next check is 11/9, not January.

16 MR. RUBINSTEIN: No, your Honor. If your Honor looks
17 at details for the check, they have -- they show the date
18 that -- from the memo as to what period. We concede it was
19 paid after the grant. But this, these expenses were for --
20 were owed from 2000.

21 THE COURT: I understand. You've covered that. But
22 then you skipped this October 26 to January, and there were
23 payments made in November and in December which you omitted in
24 your question. You said it was the next check.

25 MR. RUBINSTEIN: I am going by the, the checks in the
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866zkar2 Riley - cross

1 schedule, your Honor. There's --

2 THE COURT: I'm going by the checks in the schedule
3 too, page 39 of 44.

4 MR. RUBINSTEIN: Right. The first --

5 THE COURT: So let's frame your question properly.

6 MR. RUBINSTEIN: Okay.

7 Q. The first check that was paid was for January 2000's rent,
8 correct?

9 A. Yes.

10 Q. The next check was February 2000's rent?

11 A. Yes.

12 Q. Next is March 2000 rent?

13 A. Yes.

14 Q. And April 2000 rent?

15 A. Yes.

16 Q. Then May 2000's rent?

17 A. Yes.

18 Q. June 2000's rent?

19 A. Yes.

20 Q. July 2000 rent?

21 A. Yes.

22 Q. August 2000 rent?

23 A. Yes.

24 Q. September 2000 rent, correct?

25 A. Correct.

866zkar2

Riley - cross

1 Q. Okay. So those are nine checks that were written after the
2 grant, but paid for expenses incurred before the grant,
3 correct?

4 A. Correct.

5 Q. Now, then you have the next check is for January rent 2001,
6 correct?

7 A. Correct.

8 Q. February rent, 2001?

9 A. Correct.

10 Q. March rent, 2001?

11 A. Correct.

12 Q. April rent, 2001?

13 A. Correct.

14 Q. We'll take December out. Then June rent, 2001?

15 A. Correct.

16 Q. May rent, 2001?

17 A. Correct.

18 THE COURT: But what date -- that's what you're
19 reading off is the date on the explanation, is that correct?

20 MR. RUBINSTEIN: Correct, your Honor.

21 THE COURT: Well, when were the checks written?

22 MR. RUBINSTEIN: Checks were written in October,
23 November, December and January -- October, November,
24 December 2001, after the grant.

25 THE COURT: Is that correct, Ms. Riley?

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Riley - cross

1 THE WITNESS: The checks -- this is the date the
2 checks cleared the bank on this date.

3 THE COURT: Excuse me?

4 THE WITNESS: The checks cleared the bank. These
5 would have been the times the checks cleared the bank.

6 THE COURT: When were the checks -- yes or no, were
7 the checks written in November, December, and January?

8 THE WITNESS: Yes.

9 THE COURT: There were checks written in November were
10 attributed on the check to payable for the January 1st rent?

11 THE WITNESS: Yes, yes.

12 THE COURT: All right. And similarly --

13 Q. So is it fair to say that 18 of these \$2,000 checks were
14 written to pay for expenses that occurred prior to the grant?

15 A. Yes.

16 Q. That would come to a total of \$36,000?

17 A. Right.

18 Q. Correct?

19 A. Yes.

20 Q. Okay. Fringe benefits were budgeted for a \$110,000, is
21 that correct, according to the budget?

22 A. Fringe benefits --

23 Q. Do you have the budget, ma'am?

24 A. Fringe benefits were for --

25 MR. KWOK: Your Honor, may I hand up the budget to the

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866zkar2 Riley - cross

1 witness?

2 THE COURT: You may.

3 MR. KWOK: Government exhibit 22.

4 (Handing)

5 Q. Have you examined exhibit 22, ma'am?

6 A. For year one?

7 Q. Year one.

8 A. \$110,000 is the budget for fringe benefits.

9 Q. And how much fringe benefits were expended by the business?

10 A. I don't have the, the year one amount expended. The year
11 one -- where is the --

12 Q. You want to look --

13 A. Where is the --

14 Q. You want to look at exhibit 62?

15 A. Less than \$110,000.

16 Q. Pardon? You want to look at exhibit -- maybe this will
17 help you, exhibit 62. There is an appendix number three.

18 A. Exhibit 62.

19 Q. Page 16. Does that, in any way, refresh your recollection
20 as to the amount of fringe benefits that were claimed by CASI?

21 A. That doesn't.

22 Q. Do you have anything that, that shows you the amount that
23 you disallowed, or suggested should be disallowed?

24 THE COURT: What are you referring to now?

25 MR. RUBINSTEIN: There is an appendix in exhibit 62,

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Riley - cross

1 government exhibit 62, your Honor, appendix number three,
2 page --

3 THE COURT: What page?

4 MR. RUBINSTEIN: Page 16.

5 MR. KWOK: Your Honor --

6 THE COURT: Yes.

7 MR. KWOK: I think defense counsel is directing the
8 witness' attention to the defendant's response, not to her
9 work.

10 MR. RUBINSTEIN: No. I'm directing her attention to
11 the left side of the page. As you look at it, there is --

12 THE COURT: I'm just trying to find the page, so I can
13 determine what you're referring to. Page 16, appendix three?

14 MR. RUBINSTEIN: Appendix three, yes, your Honor.

15 THE COURT: All right.

16 Q. All right. As you look at the page, the left-hand portion
17 are your numbers, correct, Ms. Riley?

18 A. Okay. The left-hand numbers.

19 Q. As you look at the page?

20 A. Yes.

21 Q. Where it says, disallows, then there is a column?

22 A. Yes, questioned is a column. Yes, okay.

23 Q. And the other side says answer. That was what was
24 submitted by Mr. Spitz in his presentation, correct?

25 A. Correct.

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Riley - cross

1 THE COURT: So the position -- this is a response to
2 the draft audit report, as Mr. Kwok said, right, Mr --

3 MR. RUBINSTEIN: No. These are her numbers -- yes.
4 But those -- yes.

5 THE COURT: As contained in the response --

6 MR. RUBINSTEIN: Okay.

7 THE COURT: -- to the draft audit report.

8 MR. RUBINSTEIN: Fair enough, Judge.

9 THE COURT: What?

10 BY MR. RUBINSTEIN:

11 Q. Did you check that Mr. Spitz had properly calculated and
12 identified what you had disallowed in this audit?

13 A. I'm sorry, repeat that?

14 Q. In other words, the disallowances are purported by
15 Mr. Spitz to be what you disallowed as the OIG auditor from
16 CASI?

17 A. Correct.

18 Q. And did you check these figures so that could you determine
19 that those were, in fact, your disallowances?

20 A. Correct.

21 Q. So these -- so it's fair to say that the numbers depicted
22 on the left-hand side of the page, as you look at it, marked
23 disallowance, are in fact your numbers?

24 A. Correct.

25 Q. And by the way, Mr. Spitz submitted an 80 page response,

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Riley - cross

1 did he not?

2 A. The response? Dr. Karron, with the aid of Mr. Spitz. I --
3 what, this 38 page response?

4 Q. Well, did you -- was it an 80 page response?

5 THE COURT: It says 16 of 38, Mr --

6 MR. RUBINSTEIN: I know what it says, Judge. I'm just
7 asking a question.

8 THE COURT: Was it in fact more than this 38 pages,
9 Ms. Riley?

10 THE WITNESS: I --

11 THE COURT: Do you know?

12 THE WITNESS: I think this is all.

13 THE COURT: Do you know? Yes or no, or you don't
14 know?

15 THE WITNESS: I don't know.

16 THE COURT: Okay.

17 THE WITNESS: This is all I know.

18 Q. Your total questionable items was \$547,000, correct? You
19 want to look at 3502B, top of the second page and see if that
20 refreshes your recollection?

21 A. 547?

22 Q. What?

23 A. Yeah 547.

24 Q. 547,000 was questionable, correct?

25 A. Correct.

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Riley - cross

1 Q. And you didn't change one dollar after you reviewed
2 Mr. Spitz's response, correct?

3 A. Correct.

4 Q. And it's a fact that --

5 THE COURT: Who gave the response; do you know who
6 wrote it?

7 THE WITNESS: The response says that Dr. Karron, with
8 the aid of, wrote it.

9 THE COURT: Dr. Karron, with the aid of Mr. Spitz?

10 THE WITNESS: On page, on page one of 38.

11 THE COURT: All right. Thank you.

12 Q. So were there additional rebuttals, other than this
13 appendix? Were there other documents submitted besides this
14 rebuttal that we have here in appendix three?

15 A. After the final report? After the report was -- after the
16 draft?

17 Q. No, when you received --

18 A. I don't recall any, any other.

19 Q. Well, do you recall telling Mr. Kwok on April 22nd, 2008
20 that an 80 page rebuttal was submitted?

21 A. I don't recall.

22 Q. Let me show it to you. You met with Mr. Kwok on April --
23 I'm sorry -- April 22nd, correct?

24 A. I don't recall the date.

25 Q. I show you what's -- when you met with Mr. Kwok, did he

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Riley - cross

1 take notes when he spoke to you?

2 A. I don't recall if he took notes.

3 Q. All right. I'm going to show you what's been marked as
4 3502B and identified as defendant's exhibit I for
5 identification and ask you to look at the second page where I
6 have a number ten on the right-hand side and see if that
7 refreshes your recollection as to telling Mr. Kwok that an 80
8 page rebuttal was submitted?

9 A. I don't recall saying an 80 page rebuttal was submitted.

10 Q. Okay. Now, do you have any calculation for the, for the
11 total amount of fringe benefits that were expended?

12 A. Total amount -- yes.

13 Q. And what was the total amount --

14 A. For --

15 Q. -- of fringe benefits that were expended by CASI?

16 MR. KWOK: Your Honor, if I could direct the witness'
17 attention to government exhibit 114 and 115.

18 (Handing)

19 THE COURT: It's 10 after 11:00. While you're
20 conferring, let's have the jury take a break while you confer
21 and get your examination together.

22 (Jury exits the courtroom)

23 (Continued on next page)

24

25

866zkar2 Riley - cross

1 (In open court; jury not present)

2 THE COURT: All right, are you near the end?

3 MR. RUBINSTEIN: Unfortunately not, Judge, because I
4 can't get yes or no answers, and --

5 THE COURT: You can get yes or no answers.

6 MR. RUBINSTEIN: All right.

7 THE COURT: All you have to do is ask for them, you'll
8 have them.

9 MR. RUBINSTEIN: I'll do that.

10 THE COURT: All right, thank you.

11 (Recess)

12 THE COURT: All right, please be seated. Let's bring
13 in the jury.

14 (Jury entering)

15 THE COURT: Please be seated.

16 All right, Mr. Rubinstein.

17 BY MR. RUBINSTEIN:

18 Q. I had asked you before the break if you have a total of the
19 amount of fringe benefits that were paid by CASI?

20 THE COURT: In any year?

21 Q. If the year, first year in rent. We've established that
22 they were authorized to pay 110,000, and the government gave
23 you exhibits one -- government Exhibit 114 and 115 for you to
24 refresh your recollection?

25 A. Correct. And so they have an allocation for 163,460,

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Riley - cross

1 according to the checks.

2 Q. Pardon?

3 A. 160 -- 100 and -- in the checks written --

4 THE COURT: What are you looking at?

5 THE WITNESS: At the government 110.

6 Q. Looking at government 110?

7 THE COURT: Where in government 110? What?

8 THE WITNESS: Oh, I'm sorry. On page ten of 44. Page
9 ten, page ten.

10 THE COURT: 10 of 44?

11 THE WITNESS: 10 of 44.

12 Q. What was that page again, please?

13 THE COURT: Page ten of 44, Mr. Rubinstein.

14 MR. RUBINSTEIN: Thank you.

15 THE COURT: What is 110 taken from, Ms. Riley; whose
16 records are you basing this on?

17 THE WITNESS: On the -- this document is the one we
18 did from the cancelled checks after last year -- after the
19 audit.

20 Q. So it's pages 110 and 111, is that -- I'm sorry, pages ten
21 and 11 of Exhibit 110, is that what you're referring to?

22 THE COURT: She said page ten of 44.

23 Q. 10 of 44?

24 A. 10 of 44, yes.

25 Q. What is your total amount of fringe benefits that was

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1 claimed?

2 A. 158 -- I don't have that for a year.

3 THE COURT: Do you have it for --

4 THE WITNESS: The claims, the claimed amount is
5 158,576.

6 THE COURT: For what period?

7 THE WITNESS: October 1, 2001 through June 27th, 2003.

8 Q. So that's for a year and nine months?

9 A. Yes.

10 Q. You do not have the -- they were entitled to 110,000 in
11 fringe benefits the first year, correct?

12 A. Correct.

13 Q. And they were entitled, I think, to 127,000 the second
14 year; am I correct or incorrect about that?

15 A. Correct.

16 Q. So that that would be over 230,000 for fringe benefits, and
17 that includes the payroll taxes, right?

18 A. Correct.

19 Q. How much of this figure was the payroll taxes; is that on
20 the bottom of page 11?

21 A. How much of which figure?

22 Q. Of the, your 163,460.37 is your total fringe benefit
23 expenses, actual expenses, for 21 months of the grant, correct?

24 A. Can you repeat that?

25 Q. The fringe benefits for -- from October 1st, 2001 to June

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Riley - cross

1 30th, 2003, are reflected in this number that says, where it
2 says fringe benefits on the left, if you go across in bold
3 print, you go across that line, it says 129 detailed records?

4 MR. KWOK: What document, your Honor?

5 THE COURT: Yeah, let's -- we don't know what you're
6 reading from.

7 MR. RUBINSTEIN: I'm sorry, Judge.

8 THE COURT: You don't identify it.

9 MR. RUBINSTEIN: I'm sorry. I thought we were all --

10 THE COURT: It makes no sense for the record, Mr.
11 Rubinstein.

12 MR. RUBINSTEIN: I'm sorry, Judge. I thought we were
13 all on page ten of 44 of Exhibit 110. That's what we're
14 talking about.

15 THE COURT: She's testified to what it was. Let's go
16 on, 160. It shows there, for the record, 163,460. Is that
17 correct, Ms. Riley?

18 THE WITNESS: Yes.

19 Q. For a 21 month period, starting --

20 THE COURT: We've covered that.

21 Q. Okay. How much of that was withholding, payroll
22 withholding taxes that are considered fringe benefits?

23 A. 135,000.

24 THE COURT: How much?

25 THE WITNESS: One -- it's -- the employment tax amount

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866zkar2 Riley - cross

1 includes the, the employer's share, but it's 135,000 for the
2 total employment tax.

3 THE COURT: I'm sorry?

4 THE WITNESS: 135,000 on page 11 of 44.

5 THE COURT: Page 11 of 44?

6 THE WITNESS: Of 110.

7 THE COURT: All right.

8 Q. And so the non-payroll tax fringe benefits equal what?

9 A. Approximately 35 -- approximately \$30,000.

10 Q. Now, and you disallowed -- your recommendation was a
11 disallowance of \$68,884, correct?

12 A. Correct.

13 Q. Because when you disallowed salary, you disallowed what the
14 percentage of payroll tax would be applicable to that salary,
15 correct?

16 THE COURT: Is that the reason you did it?

17 THE WITNESS: Repeat that, please?

18 Q. Yeah. When you disallowed salary, you know, like Gurfein's
19 25,000, Dr. Karron's 40 some odd thousand, you then disallowed
20 as allowable expense the payroll tax that was paid on that
21 \$71,000?

22 A. Correct.

23 Q. So that if the salary was in fact allowable, then the
24 fringe benefit would've been allowable, correct?

25 A. Correct.

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1 Q. And did you disallow -- well, I'll withdraw that.

2 Now, you also had a category of meals, correct?

3 A. Correct.

4 Q. And you had disallowance in that category?

5 A. Correct.

6 Q. You showed us an entire schedule related to meals, correct?

7 A. Correct.

8 Q. And did you ascertain whether or not -- withdrawn. It's

9 appropriate, if you have a business meeting, to -- meals are

10 deductible, are they not?

11 MR. KWOK: Objection. Deductible?

12 Q. Well, allowable. I'm sorry. Is that correct?

13 A. For what?

14 Q. Are meals an allowable expense if --

15 A. Approved by the budget.

16 Q. -- if discussing CASI business at a coffee shop?

17 THE COURT: Allowable grant expense?

18 THE WITNESS: No, not for discussing CASI.

19 THE COURT: What?

20 Q. Pardon?

21 THE COURT: Why not?

22 THE WITNESS: No. The meals -- the meals would not

23 be -- meals would depend.

24 Q. Pardon?

25 A. Meals -- they would -- for discussing CASI business, they

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Riley - cross

1 would not be allowable.

2 Q. On what theory?

3 A. Some --

4 Q. What auditing theory is there that says that a business
5 meeting conducted in a restaurant or in a board room where food
6 is supplied, is not an allowable expense?

7 A. They -- it would --the some -- some may be allowable for --
8 for NIST expense.

9 THE COURT: What, I'm sorry?

10 A. To discuss NIST. But for meetings to discuss CASI business
11 expense --

12 Q. Well, the only business CASI had was NIST, correct?

13 A. All of the aspects of a NIST are not -- the
14 commercialization of the end product of the marketing strategy
15 of the product you're creating is not an allowable expense,
16 even though it's required by NIST for the grant.

17 Q. Did you inquire as to what any of these meal deductions
18 related to?

19 A. I, I've -- yes.

20 Q. And did you ascertain that in the computer at CASI with the
21 scanned invoices and checks, were also scanned receipts from
22 each one of these items that you say are -- that you list in
23 the meals category?

24 A. I don't recall if I have a specific sample from the food
25 category.

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Riley - cross

1 Q. Is it fair to say, ma'am, that you just took the American
2 Express statement, monthly statements and just wrote down every
3 meal that was charged, or coffee or Chinese food or whatever,
4 right?

5 A. For the review of the end analysis of checks, yes.

6 Q. The analysis of the American Express, there were no checks
7 written for these, quote, meals, correct?

8 A. Correct.

9 Q. They were paid for by the American Express card, right?

10 A. Correct.

11 Q. Now, did you ever request any backup to show what -- who
12 was present when these funds were expended?

13 A. I don't recall.

14 Q. Well, let me show you what's been marked for identification
15 as defendant's -- I show you what's been marked as defendant's
16 exhibit CCC.

17 MR. RUBINSTEIN: Here, your Honor.

18 (Handing)

19 THE COURT: Thank you.

20 (Continued on next page)

21

22

23

24

25

8667KAR3

Riley - cross

1 BY MR. RUBINSTEIN:

2 Q. I show you what's been marked for identification as CCC.

3 Are you familiar with that document, ma'am?

4 A. I don't recall.

5 Q. Well, why don't you take a look at Government Exhibit 110,
6 page 24 of 37. In the middle of the page you have a Moonstruck
7 East restaurant on 4/5/03, right?

8 A. Correct.

9 Q. In the amount of \$50, right?

10 A. Yes.

11 Q. And that's in the amount of \$50, correct?

12 A. Sorry. What?

13 Q. CCC --

14 A. Yes.

15 Q. Is that the receipt for the same date and the same amount

16 --

17 A. Yes.

18 Q. -- that you have in your exhibit?

19 A. Yes.

20 Q. And you never saw this before, correct?

21 A. CCC?

22 Q. Yes.

23 A. I don't recall seeing this before.

24 Q. Did you ever ask for any documentation of any of the meals
25 that you disallowed?

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Riley - cross

1 A. I don't recall.

2 Q. Page 2, do you see what's reflected on page 2 of that
3 document, CCC?

4 A. Oh, yes.

5 MR. RUBINSTEIN: We offer CCC into evidence, your
6 Honor.

7 MR. KWOK: Objection.

8 THE COURT: CCC is admitted into evidence.

9 (Defendant's Exhibit CCC received in evidence)

10 Q. Do you see on the second page it says dinner meeting,
11 correct?

12 A. Yes.

13 Q. And do you recognize Dr. Karron's signature?

14 A. Yes.

15 Q. And do you recognize -- there are two other signatures
16 there, correct?

17 A. Correct.

18 Q. Do you recognize either of those signatures?

19 A. I -- no.

20 THE COURT: She doesn't recognize any of the
21 signatures.

22 MR. RUBINSTEIN: I just want to exhibit that to the
23 jury, your Honor. That's the rear portion of the receipt.

24 Q. Bottom line says dinner meeting. Above that is Dr.
25 Karron's signature, right, Ms. Riley?

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Riley - cross

1 A. Correct.

2 Q. And above that are two other items, correct?

3 A. Correct.

4 Q. That you cannot identify?

5 A. Correct.

6 THE COURT: Let's move it along, Mr. Rubinstein. We
7 don't need all those extended conferences at the table there.
8 Let's please move it on. We don't need those extended waits
9 and extended time. We are losing a lot of time by that.

10 Q. Did you in fact go with Dr. Karron and Bob Benedict to
11 Christine's on June 25, 2003?

12 A. Yes.

13 THE COURT: What? To where?

14 MR. RUBINSTEIN: C-R-I-S-T-I-N-A-'-s.

15 Q. Did you go there?

16 A. I went to a restaurant with them.

17 THE COURT: You did go to a restaurant with them?

18 THE WITNESS: Um-hum.

19 Q. And did you -- the audit is deductible, correct? The cost
20 of the audit is deductible.

21 THE COURT: The cost of whose audit?

22 Q. The payment for an auditor, Ms. Hayes in this case, is a
23 deductible expense, allowable expense, under the NIST grant,
24 correct?

25 THE COURT: The cost for Ms. Hayes auditing the books
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Riley - cross

1 is a deductible expense, that's true. Is that correct?

2 THE WITNESS: Yes, the cost of the audit is a
3 deductible expense.

4 Q. And in fact when you went to lunch -- rather, when you went
5 out with Dr. Karron and Ms. Hayes, Dr. Karron paid for that,
6 did he not?

7 A. Yes, I guess.

8 Q. I show you what's been marked --

9 THE COURT: Did he pay for it?

10 THE WITNESS: I guess. I guess.

11 THE COURT: You don't know.

12 THE WITNESS: I don't recall.

13 THE COURT: All right. Then answer that.

14 Q. Let me show you what's been marked as Defendant's N for
15 identification and ask you to look at the front.

16 THE COURT: Please, let's move it along.

17 MR. RUBINSTEIN: Well, I'm waiting for an answer from
18 the witness.

19 THE COURT: What have you shown her?

20 MR. RUBINSTEIN: I have shown her Exhibit N, as in
21 Nancy. My wife's name.

22 THE COURT: Let me see it. I haven't gotten a copy.

23 MR. RUBINSTEIN: I'm trying to print it out now,
24 Judge.

25 THE COURT: What date is it?

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Riley - cross

1 MR. RUBINSTEIN: The date is June 25, 2003. It's
2 reflected on Government Exhibit 110, page 23 of 37.

3 THE COURT: All right.

4 Q. Ma'am, by looking at Exhibit N, does that refresh your
5 recollection?

6 A. Exhibit N?

7 Q. Yes.

8 A. Yes.

9 Q. And, as a matter of fact, do you recall that you paid your
10 own share?

11 A. Yes.

12 Q. And so \$17 even was the share for Ms. Hayes, Mr. Benedict
13 and Dr. Karron, correct?

14 A. This is showing that Ms. Hayes paid separately also.

15 Q. Ms. Hayes paid separately, OK. And that was during, while
16 you were there to do your field work.

17 A. Yes.

18 Q. Right?

19 A. Yes.

20 Q. You deducted -- you disallowed that meal, that \$17 on your
21 schedule, right?

22 THE COURT: Just yes or no.

23 A. Yes.

24 Q. Did you feel that going and discussing -- you discussed
25 audit business, did you not?

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Riley - cross

1 A. Yes, we did.

2 Q. Do you feel that that meeting, discussing audit business,
3 is not an allowable expense under NIST?

4 A. No.

5 Q. No what? It's not allowable?

6 A. It would be allowable.

7 THE COURT: It what?

8 THE WITNESS: Would be allowable.

9 THE COURT: It would be allowable.

10 THE WITNESS: If there was -- yes, it would be
11 allowable.

12 MR. RUBINSTEIN: We offer Defendant's N into evidence.

13 MR. KWOK: Objection, your Honor. The witness has not
14 authenticated the document.

15 THE COURT: Let me see the document.

16 Q. Did you sign the back of that, ma'am? Is that your
17 signature on the back?

18 THE COURT: Is that your signature, or is that someone
19 else's writing?

20 THE WITNESS: It's not my signature.

21 Q. But that is the expense that you have on your sheet, do you
22 not? That is for the same date, the same amount, the same
23 restaurant that you have listed in Exhibit 110, correct?

24 THE COURT: I am allowing it into evidence. Let's go
25 ahead.

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Riley - cross

1 MR. RUBINSTEIN: OK.

2 THE COURT: What page is this on?

3 MR. RUBINSTEIN: Page 23 of 37, your Honor, near the
4 top quarter of the page.

5 THE COURT: All right.

6 Q. Now, in addition to that, you have on page 22, number 37 of
7 Exhibit 110, you have expenses for a restaurant Benjamin's. Do
8 you see that? It says 530 is the number on the left-hand side.

9 THE COURT: What page?

10 MR. RUBINSTEIN: Page 22 of 37.

11 THE COURT: Go ahead. What date are you referring to?

12 Q. Do you know what the first visit to Benjamin's was at
13 November 5, 2002?

14 THE COURT: Did you ever ask about November 5, 2002?

15 THE WITNESS: I don't recall.

16 Q. Well, are you aware -- did you ever speak to -- withdrawn.

17 You spoke to Ms. Lide and Ms. Orthwein of NIST ATP,
18 correct?

19 A. Yes.

20 Q. Are you aware as you sit there now whether or not they went
21 with Dr. Karron to Benjamin's restaurant when they came for
22 their site visit at CASI?

23 A. I don't know what they did.

24 Q. Now, you got these expenses from the American Express card,
25 correct?

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8667KAR3

Riley - cross

- 1 A. Correct.
- 2 Q. And were there meals charged every day to the American
- 3 Express card?
- 4 A. No.
- 5 Q. As a matter of fact, Dr. Karron had another credit card,
- 6 did he not?
- 7 A. A personal -- yes.
- 8 Q. He had a Mastercard, right?
- 9 A. Yes.
- 10 Q. Have you ever reviewed his Mastercard records?
- 11 A. No.
- 12 Q. Either in your Government Exhibit 110 or Government Exhibit
- 13 111 you have a Mastercard schedule, do you not?
- 14 A. I have an American Express schedule.
- 15 Q. No Mastercard.
- 16 A. No.
- 17 Q. And you never saw a Mastercard schedule?
- 18 A. I don't recall seeing a Mastercard schedule.
- 19 THE COURT: Let's move this along, Mr. Rubinstein.
- 20 MR. RUBINSTEIN: Yes, your Honor.
- 21 Q. And the equipment -- sorry, supplies, did you disallow
- 22 supplies?
- 23 A. Yes.
- 24 Q. And how much supplies did you disallow?
- 25 A. Supplies, 24,000.

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8667KAR3 Riley - cross

1 THE COURT: Which year are we talking about?

2 MR. RUBINSTEIN: The first year of the grant.

3 A. Oh, the first year? That's total grant.

4 THE COURT: It's the total grant.

5 MR. RUBINSTEIN: Pardon?

6 THE COURT: You have to move this along. I mean you
7 are putting me to sleep, Mr. Rubinstein. Let's move it along.
8 All right? I'm only going to allow you another 15 or 20
9 minutes. That's it.

10 MR. RUBINSTEIN: I agree with you, Judge.

11 THE COURT: Let's go.

12 Q. You disallowed utilities, did you not?

13 A. Disallowed utilities?

14 Q. Yes.

15 A. Yes.

16 Q. Are you aware that there were discussions between Dr.
17 Karron and NIST as to whether to allow a portion of the
18 utilities?

19 A. Yes.

20 THE COURT: When? All right.

21 Q. And is it fair to say that you determined that a portion of
22 the utilities should be allowable?

23 MR. KWOK: Your Honor, is it an audit, or is it an
24 analysis based on the bank statements? I don't know what
25 Mr. Rubinstein is asking.

8667KAR3

Riley - cross

1 THE COURT: The audit? Are you addressing the audit,
2 Mr. Rubinstein?
3 MR. RUBINSTEIN: Yes.
4 THE COURT: In the audit, did you say that some -- did
5 you determine that a portion of the utilities should be
6 allowable? Yes or no? Yes or no?
7 THE WITNESS: No.
8 THE COURT: All right.
9 Q. And what about education?
10 A. No.
11 Q. You disallowed all the education, right?
12 A. Right.
13 Q. Even if the education was related to the NIST ATP project,
14 correct?
15 THE COURT: Were you advised that any of it related to
16 the project?
17 THE WITNESS: Yes.
18 THE COURT: What?
19 THE WITNESS: Yes.
20 THE COURT: What portion?
21 THE WITNESS: One of the costs was for a student.
22 There were two educational costs, and I think one was for a
23 student.
24 THE COURT: One was for a student.
25 THE WITNESS: The Ph.D student, right? A student

8667KAR3

Riley - cross

1 employee that Dr. Karron had.

2 Q. And another one was Joan Hayes going to a seminar to learn
3 about auditing for federal grants, correct?

4 A. Correct.

5 Q. You disallowed both of them, correct?

6 A. Correct.

7 Q. Now, you could permit fringe benefits either under the
8 budget item or it could be chargeable to others, right?

9 A. Correct.

10 Q. By the way, there was some talk about medical bills. Do
11 you know when Dr. Karron had surgery?

12 THE COURT: Did you know he had surgery at all?

13 THE WITNESS: I knew he had surgery. I don't know
14 when.

15 Q. Isn't it a fact that it was after the grant was suspended?

16 A. I don't know when.

17 THE COURT: The surgery was or that she learned of it?

18 Q. Did you see any expense, medical expense, for surgery for
19 Dr. Karron?

20 MR. KWOK: When?

21 Q. When you did your audit.

22 A. There were medical expenses for Dr. Karron.

23 Q. Did you see anything for surgery?

24 A. I don't recall seeing anything specifically, what
25 everything was.

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8667KAR3

Riley - cross

1 Q. Now this audit that NIST requires, requires an independent
2 auditor, correct?

3 A. Correct.

4 Q. And they had Ms. Hayes, correct?

5 A. Correct.

6 Q. In fact you were aware that Ms. Hayes did Dr. Karron's
7 personal tax returns, were you not?

8 A. I don't recall if I knew that at the time or not.

9 Q. Would that disqualify her as an independent auditor?

10 MR. KWOK: Objection.

11 THE COURT: Did you allow the expense for her as an
12 independent auditor?

13 THE WITNESS: Yes.

14 THE COURT: You did. Objection sustained.

15 Q. My question is she created records that she gave to you,
16 correct?

17 A. Correct.

18 Q. Now, is it fair to say that the person that does the
19 audit -- in this case Ms. Hayes -- is supposed to be an
20 independent auditor?

21 A. Correct. Correct.

22 Q. Because she might have some interest if she wasn't
23 independent, correct?

24 A. Correct.

25 Q. In this case were you aware whether or not she was involved

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8667KAR3 Riley - cross

1 in management decisions?

2 THE COURT: Do you know?

3 THE WITNESS: I'm not sure how much her involvement
4 was.

5 THE COURT: Sorry?

6 THE WITNESS: I don't -- I don't know.

7 THE COURT: You didn't know that.

8 THE WITNESS: I don't know about her.

9 Q. Are you familiar with Quick Books, the system Quick Books?

10 A. Yes.

11 Q. Were you familiar with them in 2003 when you did this
12 audit?

13 A. No.

14 THE COURT: You weren't familiar with the --

15 THE WITNESS: I'm not familiar --

16 THE COURT: -- with that system of bookkeeping?

17 THE WITNESS: No, I'm not familiar. I wasn't familiar
18 with that system of bookkeeping.

19 Q. Now, you told this jury -- how much money of Dr. Karron was
20 attributable as a cofund by Dr. Karron?

21 MR. KWOK: Objection.

22 THE COURT: Sorry. Could I hear the question.

23 Q. Yeah. How much money do you say was contributed by Dr.
24 Karron as his contribution to the NIST ATP project?

25 A. Nothing.

8667KAR3

Riley - cross

1 Q. Do you recall testifying here and saying it was very small,
2 between \$1200 and \$1500?

3 THE COURT: That's not my recollection of the question
4 and testimony as to his contribution.

5 Q. Well, you said it was miscellaneous. Do you recall that?

6 A. Yes.

7 Q. And do you have a schedule of what you say were
8 miscellaneous contributions?

9 THE COURT: Is the answer yes?

10 THE WITNESS: Yes. I'm sorry. Yes.

11 THE COURT: Do you want her to look it up?

12 MR. RUBINSTEIN: No, your Honor, I want to move along.

13 Q. How much was in the bank in the beginning of October, in
14 the CASI accounts in the beginning of October 2001?

15 A. I don't recall. Is there a bank statement?

16 Q. Well, let me show you what's been marked as Defendant's O.

17 THE COURT: Defendant's O for identification.

18 MR. RUBINSTEIN: I'm sorry. I will withdraw that.

19 Q. Do you know what sunk costs are?

20 A. What?

21 Q. Do you know what sunk costs means?

22 A. No.

23 THE COURT: Sunk costs?

24 MR. RUBINSTEIN: S-U-N-K costs.

25 A. No.

8667KAR3 Riley - cross

1 Q. Do you know whether or not purchases made for the grant,
2 that were made prior to the grant's start of October 1, 2001,
3 were paid after October 1, 2001, whether or not those are
4 proper expenditures under the grant?

5 A. Grants paid prior to the grant award need written
6 permission.

7 THE COURT: Sorry? Witness.

8 A. Payments made prior to the grant award need written
9 approval by NIST. They need written approval. Is that what
10 we're asking? Costs that were before the award? ATP costs
11 that were made prior to the award, is that allowable in the
12 grant? If the grant award document allows it.

13 THE COURT: If you have written approval.

14 THE WITNESS: Yes, if you have written approval.

15 Q. So, if you purchased something, if CASI purchased the Quick
16 Books software in September of 2001 and it was delivered after
17 the grant -- after October 1, 2001, and paid for in November of
18 2001, would that be an allowable or unallowable item?

19 A. If it was used for the ATP grant, it was part of the grant
20 cost it could be allowable.

21 THE COURT: It could be. On what condition?

22 THE WITNESS: If it's specifically for the ATP
23 project, the software for a specific accounting -- if the
24 business accounting is also done on that system it would not
25 necessarily be allowable, because the business should already

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Riley - cross

1 have it in place as part of their business.

2 Q. Did you entertain how much costs were incurred prior to the
3 October 2001 by CASI on behalf of the ATP NIST grant?

4 A. Specifically I used the books provided, and whatever they
5 requested was considered. So if it's a cost that was prior to,
6 it would have been considered if it was on the books, because I
7 think they went to the check to cash basis, so they would have
8 paid --

9 THE COURT: Sorry. What did you say?

10 THE WITNESS: I think Mr. Spitz had moved to the cash
11 basis, so if it was included as payment it would have been one
12 of the things claimed, probably under equipment or supplies,
13 and would be over budget, so it would be over budget.

14 Q. How about the cost share provided by donating equipment, is
15 that permissible?

16 A. If it's specifically NIST ATP project costs, yes.

17 Q. Did you make any allowance -- withdrawn.

18 Were you aware whether or not Dr. Karron had computers
19 and equipment prior to the ATP grant?

20 A. Yes.

21 Q. Did you make any allowance to give him credit for his share
22 of the contribution of about \$36,000 in the first year of the
23 grant that he was supposed to contribute?

24 A. I asked for their cost share. No one put forth that as an
25 answer.

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8667KAR3

Riley - cross

1 Q. No one mentioned that?

2 A. Right, no one came up -- no one provided documentation to
3 show that.

4 THE COURT: And no one said so?

5 THE WITNESS: Right. No one offered that. I don't
6 recall anyone offering that as a thing for match, but usually
7 you would have whatever you would go into a business, that
8 would not be what they considered their cost share or their
9 match share.

10 Q. Isn't it a fact that Mr. Spitz gave you backup to show when
11 the equipment was purchased?

12 A. Most -- I was under the impression that the equipment had
13 been replaced by the equipment purchased with this award.

14 Q. And who gave you that impression?

15 A. Various people that I spoke to, reviewing the invoices of
16 the equipment cost.

17 Q. Now, it's your testimony that Dr. Karron did not contribute
18 any funds to the --

19 THE COURT: You've got about five minutes.

20 Q. I show you that Dr. Karron contributed nothing, no
21 financial funds to the grant. Is that your testimony?

22 A. Correct.

23 Q. You reviewed the checks, Dr. Karron's personal checks?

24 A. Correct.

25 Q. And I show you what's been marked for identification as

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8667KAR3 Riley - cross

1 Defendant's FFF and ask you do you recognize what's contained
2 in that document?

3 A. Checks.

4 Q. Pardon?

5 A. They're checks.

6 Q. Are those checks of Dr. Karron's on account ending 1665?

7 A. OK.

8 Q. Do you recognize those checks?

9 THE COURT: FFF.

10 Q. FFF?

11 A. Yes.

12 MR. RUBINSTEIN: We offer them in evidence, your
13 Honor.

14 THE COURT: FFF are admitted in evidence.

15 MR. KWOK: No objection.

16 (Defendant's Exhibit FFF received in evidence)

17 Q. Now, I show you what's in evidence. This is copies of a
18 number of checks with the fronts and the backs. Now, do you
19 see that exhibit, ma'am?

20 THE COURT: This is part of FFF?

21 MR. RUBINSTEIN: Yes, your Honor.

22 A. Yes.

23 Q. Do you see what date that is?

24 A. 10/11/2001.

25 Q. And who is the payee?

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Riley - cross

1 A. Computer Aided Surgery.

2 Q. And is there a memo on there?

3 A. Emergency loan to the Computer Aided Surgery.

4 Q. So, that's \$2,000 that was -- and Computer Aided Surgery,
5 Inc is the account that NIST expenses were being made out of,
6 right?

7 THE COURT: Sorry?

8 A. Yes.

9 Q. NIST expenses were being paid at that time out of this
10 account.

11 A. Yes.

12 Q. And in fact this is prior to the time that any NIST monies
13 were transferred to Dr. Karron.

14 A. Yes.

15 THE COURT: To what account?

16 MR. RUBINSTEIN: Any account.

17 THE COURT: This is prior to the time that any money
18 was paid to that account?

19 MR. RUBINSTEIN: Correct. I think the first time was
20 October 25, if I'm not mistaken.

21 Q. Now, I show you this check marked 1052 as part of Exhibit
22 FFF. See if you recognize that check.

23 A. Yes.

24 Q. And that is also a check made to Computer Aided Surgery
25 Inc. in the amount of \$1,000, correct?

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Riley - cross

1 A. Correct.

2 Q. And it says the memo is emergency loan to corporation.

3 Right?

4 A. Right.

5 Q. And again that's the corporation that's paying NIST bills,

6 right?

7 A. At this time -- when did the ATP account come into

8 existence?

9 THE COURT: I can't hear you.

10 THE WITNESS: It may have been --

11 Q. And on August 12, 2002 Dr. Karron's personal check number

12 1121 was payable to CASI, Computer Aided Surgery, Inc.?

13 A. Yes.

14 Q. The memo is loan to the company?

15 A. Yes.

16 Q. So he is loaning his personal money to the company, right?

17 A. Yes.

18 Q. And how much is that check for?

19 A. \$20,000.

20 Q. Do you have any record in all of your records of any of

21 these checks so far?

22 A. Yes. Yes.

23 Q. As contributions of Dr. Karron?

24 A. No, no.

25 THE COURT: You have records of the checks?

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Riley - cross

1 THE WITNESS: Yes.

2 THE COURT: Where?

3 THE WITNESS: They're -- they're both records
4 actually.

5 MR. KWOK: Your Honor, may we direct the witness to a
6 particular page of Government Exhibit 110?

7 THE COURT: Yes.

8 MR. KWOK: Government Exhibit 110, page 38 of 44.

9 Q. So, is it fair to say in reviewing your record that you
10 have a total of \$37,000 attributable to contributions made by
11 Dr. Karron, is that right?

12 A. I considered them loan repayment to the \$129,000 that he
13 had taken from the NIST ATP account.

14 Q. Pardon?

15 THE COURT: Repeat your answer. You speak very
16 quickly, and you just rattle it off. All right?

17 A. OK. I attributed the \$37,000 payments as loan repayments
18 to the \$129,850 that Dr. Karron had taken as loans from the
19 NIST ATP grant.

20 Q. Time out. Dr. Karron took \$75,000 loan in October or early
21 November 2001, after he got \$150,000 from NIST ATP, correct?

22 A. Correct.

23 Q. You did your analysis when?

24 A. Which analysis?

25 Q. When did you do your analysis?

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Riley - cross

1 A. I --

2 Q. When did you make that determination that these were
3 repayment of a loan?

4 A. Initially back --

5 Q. In June of '03?

6 A. December of '03.

7 Q. December of '03?

8 A. Or June of '03.

9 THE COURT: Well, wait a minute. She hasn't finished.

10 A. Wait. What's the --

11 THE COURT: What's the rest of your answer?

12 THE WITNESS: June of '03.

13 THE COURT: Pardon?

14 THE WITNESS: June of 2003.

15 THE COURT: June of 2003.

16 Q. Isn't it a fact, ma'am, that in August and September of
17 2002 Dr. Karron repaid that money out of his salary in fact?

18 A. The repayments of the salary were part of expenditures that
19 were also disallowed. It depends on which --

20 Repeat your question.

21 Q. In August of '02 did you see an entry on August 2, 2002 of
22 \$61,918.07 as salary to Dr. Karron?

23 THE COURT: What are you referring to, Mr. Rubinstein?
24 Is it an exhibit in evidence? What is it?

25 Q. Did you calculate at any time the monies received as salary

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1 in a schedule, salaries received by Dr. Karron?

2 THE COURT: I don't understand the question.

3 MR. RUBINSTEIN: He received payment.

4 THE COURT: I just want to hear the question phrased
5 so that it's understandable.

6 MR. RUBINSTEIN: The question is did this witness
7 prepare a schedule showing the salary checks of Dr. Karron from
8 October 1, 2001 until September 30, 2002, the first year of the
9 grant?

10 THE COURT: What time are you asking?

11 MR. RUBINSTEIN: During that year, the first year of
12 the grant.

13 THE COURT: During the year -- October 1, 2002.

14 MR. RUBINSTEIN: 1, October 1, 2001.

15 THE COURT: 2001 to September 30, 2002, did you
16 prepare a schedule? Is that your question?

17 MR. RUBINSTEIN: Yes.

18 THE COURT: Of his salary for that year?

19 MR. RUBINSTEIN: Right.

20 THE COURT: Were you assigned to the audit in that
21 period of time?

22 THE WITNESS: I did the audit starting June of 2003.

23 THE COURT: So, you couldn't have done anything during
24 that first fiscal year, is that right?

25 THE WITNESS: Right, yes.

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8667KAR3 Riley - cross

1 THE COURT: You didn't prepare any schedules during
2 the first fiscal year.

3 THE WITNESS: Right.

4 THE COURT: Do you want to reframe your question,
5 Mr. Rubinstein?

6 Q. Do you know what a schedule is, ma'am?

7 MR. KWOK: Objection.

8 THE COURT: Objection sustained. Five more minutes.
9 Five more minutes, that's it.

10 MR. RUBINSTEIN: Judge, it's not fair.

11 THE COURT: Five minutes.

12 MR. RUBINSTEIN: I'm not getting answers.

13 THE COURT: You're getting answers; you're not asking
14 questions. You're dawdling around there in the back of the
15 courtroom.

16 MR. RUBINSTEIN: I am not.

17 THE COURT: And you're not asking questions. Now ask
18 questions and do it quickly.

19 Q. How many checks did Dr. Karron receive in the first year of
20 the grant for salary?

21 A. I don't recall.

22 Q. Do you have any notes or notations?

23 A. I have it in this document I prepared in 2004. I don't
24 have --

25 Q. You have a figure in Government Exhibit 114 and 115.

8667KAR3

Riley - cross

1 That's the backup for that?

2 A. This document is the backup for the 114 and 115, and in the
3 first year of the grant --

4 THE COURT: And you are looking now at Exhibit 110?

5 THE WITNESS: Yes.

6 THE COURT: All right. Where in 110? Can we point to
7 a page where his salary is listed? Can the government point me
8 to a page? Let's move this on.

9 THE WITNESS: Payroll is on page 39 of 44.

10 THE COURT: Page 39 --

11 THE WITNESS: Of 44.

12 THE COURT: Thank you very much.

13 Q. And how much did Dr. Karron -- how much was he paid in that
14 year, the first year of the grant?

15 A. It shows net salary of \$35,000.

16 MR. KWOK: Your Honor, I think there is a confusion of
17 the date. I think the witness is looking at the database for
18 year two. I think Mr. Rubinstein is asking information about
19 year one. Oh, I'm sorry, I take that back. I take that back.

20 Q. So you show \$35,000. Is that net or gross paid that Dr.
21 Karron received?

22 A. Net.

23 Q. That's after you deducted 45,000 as disallowed? Is that
24 what you're saying?

25 A. He also received \$129,000 that he called loans.

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Riley - cross

1 Q. Didn't he have a salary of \$14,000 a month?

2 A. I don't know.

3 Q. Are you aware of the fact that on September 2 -- sorry --
4 August 2, 2002 Dr. Karron, there was an entry on the books of
5 CASI showing payment to Dr. Karron of \$61,000 and change?

6 A. For?

7 Q. Salary.

8 A. But --

9 MR. KWOK: What page, your Honor?

10 THE COURT: Yes.

11 MR. KWOK: What exhibit?

12 THE COURT: You're referring us to, Ms. Riley, to page
13 38 of 49, and the top of the page you have loan and bottom of
14 the page you have loan repaid.

15 THE WITNESS: Right.

16 THE COURT: And on the next page it says payroll. So
17 basically the checks -- then you have payroll on the next page.

18 THE WITNESS: Specifically identified as payroll on
19 the checks when I looked at them in 2004 and 5.

20 THE COURT: According to your analysis of the checks,
21 the only ones that were made for payroll are the ones on page
22 39 of 44?

23 THE WITNESS: Yes.

24 THE COURT: And the others.

25 Q. Let me show you these exhibits.

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Riley - cross

1 THE COURT: Well, look, just let me clear this up. We
2 heard about the \$75,000 loan in October. On what basis did you
3 determine that the other amounts were loans by Dr. Karron?
4 Based on the entries of the check or what?

5 THE WITNESS: It's noted in the check memo, some of
6 them from their check registers or general ledgers.

7 THE COURT: Sorry.

8 THE WITNESS: From their records, from their check
9 registers or their ledgers.

10 THE COURT: From their ledgers?

11 THE WITNESS: From the ledgers or check registers
12 provided by CASI to me.

13 Q. Let me show you this document, Defendant's Exhibit P for
14 identification. Is this the document that was provided to you
15 as a register by CASI?

16 A. I don't recall.

17 Q. Isn't it a fact on the records of CASI there was an entry
18 on August 2, 2002 for a payment of salary of \$61,000 and change
19 to Dr. Karron?

20 MR. KWOK: Objection. The witness says she doesn't
21 recall.

22 THE COURT: I don't know what she saw because I wasn't
23 provided with a copy of it. Can I have a copy?

24 I'm going to sustain the objection.

25 All right.

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Riley - cross

1 MR. RUBINSTEIN: I offer in evidence, your Honor, as
2 P-1, 2, 3, 4, 5, 6.

3 THE COURT: What?

4 MR. RUBINSTEIN: Checks, P-1 through P6.

5 THE COURT: As what Exhibit?

6 MR. RUBINSTEIN: I said it's P-1 through P-6.

7 THE COURT: Oh, Defendant's Exhibits P-1 for
8 identification through P-6 for identification.

9 Q. I show you these checks and ask you if you recognize these
10 checks, ma'am.

11 A. Are those -- yes.

12 Q. And are those --

13 MR. RUBINSTEIN: We offer them into evidence, your
14 Honor.

15 MR. KWOK: No objection.

16 THE COURT: Defendant's P-1 through P-6 admitted in
17 evidence.

18 (Defendant's Exhibits P-1 through P-6 received in
19 evidence)

20 Q. Do you know of any additional checks that were given to
21 doctor -- withdrawn. Those checks have a memo as to payroll
22 periods, correct?

23 A. Correct.

24 Q. And they are payroll checks payable to Dr. Karron, correct?

25 A. Correct.

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Riley - cross

1 Q. And they start on May 11, 2002, correct?

2 A. Correct.

3 Q. And is it fair to say that on a \$175,000 salary, Dr. Karron
4 would be paid approximately \$14,000 a month gross?

5 A. Correct.

6 Q. And so if he borrowed \$75,000 in October, within five
7 months he basically would pay that back, correct?

8 THE COURT: Answer, please.

9 Q. 14 times five is 70, correct?

10 A. Yes.

11 Q. And October, November, December, January, February, by the
12 end of February he would have basically paid back the 75,000,
13 correct?

14 A. For the gross, correct.

15 Q. And in May he got a net check for \$5,019.84, right?

16 A. Correct.

17 Q. For a pay period April 1, '02 to April 30, '02, correct?

18 A. Correct.

19 Q. And then --

20 THE COURT: Let me see. How much is that check?

21 MR. RUBINSTEIN: \$5,019.84.

22 In June he gets a check, memo pay period it says
23 3/1/02 to 5/31/02, in the amount of \$5,002.25.

24 In July he receives a check for the payroll period of
25 December 1, 2001 to December 31, 2001, and that net amount of

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Riley - cross

1 that check is \$9,288.07.

2 Also in July, on July 5 he receives a check, the
3 paycheck for the pay period November 1, 2001 to November 30,
4 2001, in the amount of \$4,756.38. Correct?

5 A. Correct.

6 Q. And the third check on the same day for the payroll October
7 1, 2001 to October 31, 2001 pay period, he received a check in
8 the amount of \$5,502.01, correct?

9 A. Yes.

10 Q. And then he received a check on August 2, 2002 for pay
11 period July 1, '02 to July 31, '02, in the amount of \$5,675.03,
12 correct?

13 THE COURT: Are those checks included in your
14 schedule?

15 THE WITNESS: Yes, sir.

16 THE COURT: On page 39 of 44?

17 THE WITNESS: Yes, sir.

18 Q. And where was the rest -- if you pay taxes on those checks,
19 how much would have been the gross approximately?

20 MR. KWOK: Objection.

21 THE COURT: I don't think she should have to --

22 Q. Well, what happened to the rest of the \$175,000? Did he
23 receive any additional monies other than the 34, 35,000 that
24 are reflected in those checks?

25 A. Withholdings would have been paid through the company for

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1 those checks.

2 Q. Would the withholdings be equal to the amount of the
3 checks?

4 A. No.

5 Q. Even if they were equal, you only have 70,000. We're still
6 missing 105,000, right?

7 A. Yes.

8 Q. Did you give him any credit for that missing salary that he
9 never got?

10 A. He got the loans. He still had more loans.

11 Q. Loans for what?

12 A. Whatever he withdrew the money for.

13 Q. You don't know, right?

14 A. I don't know.

15 Q. The only one we know about is the \$75,000.

16 THE COURT: Are the loans reflected on the books?

17 THE WITNESS: Yes. Well, they say loans. They don't
18 say what they're for.

19 THE COURT: Or draws?

20 THE WITNESS: The loans say loans.

21 Q. Show me some loans other than the \$75,000 loan. Not in
22 your books. Show me. Show me a check.

23 MR. KWOK: Objection, your Honor.

24 THE COURT: All she has is the books.

25 MR. RUBINSTEIN: Well, I want the backup.

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8667KAR3 Riley - cross

1 MR. KWOK: It's in front of her in that box. Does
2 Mr. Rubinstein want the witness to dig through that box of
3 checks?

4 MR. RUBINSTEIN: Well, she did yesterday.

5 THE COURT: Are they readily available?

6 Q. Ma'am, in your schedule of Exhibit 114 --

7 THE COURT: She is looking. You asked for her to show
8 you.

9 MR. RUBINSTEIN: I'm going to withdraw that.

10 THE COURT: You asked for her to show you those
11 checks.

12 MR. RUBINSTEIN: I have a quicker way. She can do
13 that on the government's time. All right?

14 Q. In your schedule Government Exhibit 114 you have salary to
15 Dr. Karron, correct?

16 A. Yes.

17 Q. Budgeted 175, right?

18 A. Correct.

19 Q. CASI spent \$200,488 on his salary. How did you get that
20 number?

21 A. By including the withholdings portion of the fringe
22 benefits as part of the salary of what he received. It
23 includes the salary, it includes the difference between the
24 loans he received and the loans he paid, and it includes the
25 fringe benefits.

8667KAR3

Riley - cross

1 Q. You have fringe benefits listed separately, do you not,
2 ma'am?

3 A. I just have the items that are --

4 Q. Do you see 59,500 in fringe benefits?

5 THE COURT: She didn't finish her answer,
6 Mr. Rubinstein.

7 MR. RUBINSTEIN: She just said that the fringe
8 benefits are included, and I submit, your Honor, that on that
9 same schedule --

10 MR. KWOK: Objection.

11 MR. RUBINSTEIN: -- the fringe benefits are listed
12 separately as \$59,000.

13 MR. KWOK: Objection.

14 MR. RUBINSTEIN: \$59,500.

15 THE COURT: You're not a witness.

16 MR. RUBINSTEIN: I'm asking if that's on her schedule,
17 her exhibit, the Government's Exhibit 114.

18 THE COURT: Find out what you're dealing with and the
19 exhibit and I will allow your question, but I'm not allowing
20 that. And your time is up. So this is the last question.

21 MR. RUBINSTEIN: Judge, I'd ask you to give me ten
22 more minutes.

23 THE COURT: All right, ten minutes, and that is all.

24 MR. RUBINSTEIN: Thank you.

25 Q. You have on Exhibit 114 an expense for Dr. Karron's fringe

8667KAR3

Riley - cross

1 benefits?

2 A. Yes.

3 Q. And is that expense \$59,500? Do you see it on the
4 schedule? I only have ten minutes.

5 THE COURT: Just give her a minute.

6 MR. RUBINSTEIN: It's her schedule, Judge.

7 THE COURT: You're looking not on the schedule. You
8 are looking at a chart. Exhibit 114 is the pie chart.

9 MR. RUBINSTEIN: On the bottom is a break-down of
10 numbers, your Honor.

11 THE COURT: I agree with that, but let's refer to the
12 document as the pie chart, 114. Now what's your question?

13 Q. My question is: You just testified that the \$200,000 that
14 CASI spent on Dr. Karron for salary that you have here was
15 because of fringe benefits, correct?

16 MR. KWOK: Objection.

17 THE COURT: I don't think that is her testimony.
18 Objection sustained.

19 Q. What was the extra 25,488, what is that attributable to?

20 THE COURT: The 200,488?

21 MR. RUBINSTEIN: Well, it's an additional \$25,488. I
22 will take silence as an answer and move on.

23 THE COURT: Well, she has to look. You're asking her
24 to take her pie chart and then give you the backup for the pie
25 chart, and she has to look to the exhibits to show where that

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8667KAR3 Riley - cross

1 is.

2 THE WITNESS: For year one, which number are you
3 asking about? 25?

4 THE COURT: Are you asking about the 25,000 or the
5 200,488?

6 MR. RUBINSTEIN: I am asking her how she explains that
7 Dr. Karron, where the additional -- of her number of 200,000,
8 with the additional 165,000 that she attributes to Dr. Karron,
9 where is that?

10 THE COURT: 165,000?

11 MR. RUBINSTEIN: Yeah. We only have checks of about
12 35,000.

13 THE COURT: Look, stop a second. What figure is
14 165,000, Mr. Rubinstein, that you're referring to?

15 Q. The checks P-1 through P-6 total about \$35,000, correct,
16 ma'am?

17 A. Correct.

18 Q. You have a figure CASI spent for Dr. Karron without fringe
19 benefits of \$200,488?

20 A. Correct.

21 Q. You subtract 35,000 from 200,000, you come up with roughly
22 \$165,000, right? Yes or no?

23 A. Correct.

24 Q. Do you have any documentation to show \$165,000?

25 A. This chart was prepared from the check register. The

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8667KAR3

Riley - cross

1 200,000 comes from the loan -- the difference between the loan,
2 the loan pay back and the amount of salaries that he received,
3 plus the withholdings from applicable payroll, withholdings,
4 that would have been associated with his --

5 Q. The grant was suspended at your request, right?

6 A. Sorry. What?

7 Q. At your request the grant was suspended on June 27, 2003,
8 correct?

9 A. Correct.

10 Q. What were the monies owed by CASI to NIST suppliers at the
11 time the grant was suspended?

12 THE COURT: Do you know?

13 A. I don't recall.

14 Q. Did you make any kind of schedule -- they're called
15 payables, right? If you owe money and you didn't pay your
16 suppliers, is that what you call them?

17 MR. KWOK: Objection.

18 THE COURT: Let her give an answer before you ask a
19 second question.

20 Now, what was the question you were asking?

21 MR. RUBINSTEIN: Did she make any list of payables,
22 monies owed by CASI, to suppliers who supplied product for the
23 NIST ATP grant.

24 THE COURT: In July 2003.

25 THE WITNESS: I don't recall.

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8667KAR3

Riley - cross

1 Q. Do you know after the grant was suspended whether or not
2 Dr. Karron invested additional money into the CASI project, yes
3 or no?

4 A. No.

5 THE COURT: Do you know whether he invested any money
6 in the CASI project after the grant was suspended?

7 THE WITNESS: No.

8 THE COURT: I amended your question because it called
9 for two conclusions, Mr. Rubinstein.

10 MR. RUBINSTEIN: Pardon, your Honor?

11 Q. Isn't it a fact -- do you have any documentation that would
12 show whether or not Dr. Karron contributed any monies after the
13 grant was suspended --

14 MR. KWOK: Objection, relevance.

15 THE COURT: Objection sustained.

16 Q. Well, when the grant was suspended, did NIST say that he
17 was short on his contribution?

18 MR. KWOK: Objection.

19 Q. Was the grant -- I will withdraw that.

20 Was the grant suspended because he was short on his
21 copay portion according to your audit --

22 THE COURT: In?

23 Q. In June 27, 2003?

24 A. Yes.

25 Q. And in fact were you informed that he contributed \$60,000

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Riley - cross

1 in the beginning of July 2003?

2 THE COURT: You mean after the audit was complete?

3 MR. RUBINSTEIN: No, after the first audit, not the
4 final audit in December.

5 Q. In June 27 the grant is suspended, he doesn't get anymore
6 money, right?

7 A. Correct.

8 Q. He's got debts outstanding on behalf of NIST, right?

9 A. Correct.

10 Q. To get the grant restarted he is supposed to pay back
11 \$54,000, correct?

12 A. I think it was more than that, but he was supposed to pay
13 back an amount.

14 Q. All right. And is it fair to say he deposited more than
15 that amount in the CASI account and paid expenses of NIST with
16 that money after the grant was suspended?

17 MR. KWOK: Objection.

18 THE COURT: Do you know?

19 A. Was he asking me --

20 THE COURT: He is asking you if you know what happened
21 after the grant was suspended.

22 THE WITNESS: I know that some money was deposited.

23 Q. Now, you told us before that after your audit there is an
24 appeals process, correct?

25 A. Correct.

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Riley - cross

1 Q. And there is a negotiation on what's allowable and
2 unallowable, correct?

3 A. Correct.

4 Q. Called a wrap report?

5 A. I'm not familiar with that term.

6 Q. Is it a fact -- was Dr. Karron or CASI ever afforded an
7 opportunity to have this audit reconciliation?

8 A. No.

9 THE COURT: She said no, and then the court reporter
10 said no, and then she said no.

11 MR. RUBINSTEIN: I know that it's no. All right?

12 Q. So nobody reviewed your numbers from the ATP grant offices,
13 right?

14 A. I believe that's probably correct. They get a copy of my
15 report, so I don't know. I don't know.

16 Q. You told us that they're the ones that should have the
17 final say-so of what's allowable and what's not allowable in a
18 grant, right?

19 A. Correct.

20 Q. And what happened here is that the special agents jumped in
21 on this back in 2003, right?

22 MR. KWOK: Objection.

23 THE COURT: Objection sustained.

24 Q. And they made this from a civil matter into a criminal
25 matter, correct?

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Riley - cross

1 MR. KWOK: Objection. Objection.

2 THE COURT: Objection sustained.

3 Q. Well, is the audit resolution a civil procedure?

4 A. It's just a procedure.

5 Q. Yeah, where you sit down with the grant officers and

6 discuss whether or not certain expenses are allowed or

7 allowable or not?

8 A. Correct.

9 Q. That never happened here, right?

10 A. Sorry. What?

11 Q. It never happened here?

12 THE COURT: He says that never happened.

13 THE WITNESS: Correct.

14 THE COURT: You never sat down with him?

15 THE WITNESS: Oh --

16 MR. RUBINSTEIN: Is my ten minutes up, Judge?

17 THE COURT: What?

18 MR. RUBINSTEIN: I retire. I'm finished.

19 THE COURT: We will take a luncheon break.

20 Do you have any redirect?

21 MR. KWOK: Very briefly.

22 THE COURT: It's got to be brief. I mean we have to

23 move this case along.

24 MR. KWOK: Very brief.

25 THE COURT: This is terrible. Juror 3 has got her

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8667KAR3 Riley - cross

1 eyes awake all the time, but I keep an eye on her because she
2 lies back in that chair.

3 All right. The jury is excused until ten after two.
4 Can I get away with five after two? Let's say five after two.

5 (Jury not present)

6 THE COURT: Is there anything to take up?

7 MR. RUBINSTEIN: No, your Honor.

8 MR. KWOK: No, your Honor, not at this time.

9 THE COURT: Well, let's be back 2 o'clock to take up
10 something then.

11 MR. EVERDELL: There is one matter. I note that
12 defendant has introduced CCC. I think there already is a
13 defense CCC in evidence, so I think we may have to rename that

14 DEPUTY COURT CLERK: I haven't seen them.

15 THE COURT: We have to keep track of these things
16 because this is a complex situation.

17 THE DEFENDANT: I don't think I've seen any of the
18 defense exhibits.

19 THE COURT: You have to mark them.

20 (Luncheon recess)

21 (Continued on next page)

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866zkar4

1 A F T E R N O O N S E S S I O N

2 2:05 p.m.

3 THE COURT: All right, please be seated. Let's bring
4 in the jury, and the witness.

5 MR. KWOK: Very quick your Honor, hopefully.

6 THE COURT: I'll believe it when I see it.

7 (Jury entering)

8 THE COURT: I think your chair -- those carts are all
9 in the middle of the jury path.

10 (Jury present)

11 THE COURT: All right, please be seated.

12 Go ahead, Mr. Kwok.

13 MR. KWOK: Thank you, your Honor.

14 (Continued on next page)

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1 REDIRECT EXAMINATION

2 BY MR. KWOK:

3 Q. Ms. Riley, you remember on cross Mr. Rubinstein asking you
4 questions about meals?

5 A. Yes.

6 Q. And he showed you receipts of every meals that Dr. Karron
7 had with other people?

8 A. Yes.

9 Q. Ms. Riley, are meals a line item in the CASI budget
10 submitted to NIST for the grant?

11 A. No.

12 Q. Ms. Riley, you remember Mr. Rubinstein showing you checks
13 that Dr. Karron wrote to CASI?

14 A. Yes.

15 Q. Let's pull up government Exhibit 114.

16 Ms. Riley, did you take those checks into account in
17 your analysis for year one?

18 A. Yes.

19 Q. And still, what is the color represented in red there?

20 A. \$268,638.

21 Q. Let's pull up government Exhibit 115. In your --

22 THE COURT: I'm sorry, let me just see -- this is 114?

23 MR. KWOK: 114, your Honor.

24 THE COURT: What is the total amount for what?

25 MR. KWOK: Represented in the red.

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Riley - redirect

1 THE COURT: The rent?

2 MR. KWOK: Red, not rent.

3 THE DEPUTY CLERK: In the red, in the red.

4 MR. KWOK: Color red.

5 THE COURT: Red, oh.

6 Q. Let's turn now to government Exhibit 115?

7 A. Okay.

8 Q. Did you take those checks that Mr. Rubinstein showed you
9 into account in your analysis for year two?

10 A. Yes.

11 Q. And still what is the dollar amount represented in the
12 color red on your chart?

13 A. 196,504.

14 Q. Now, Ms. Riley, you remember Mr. Rubinstein also asking you
15 questions about cost share?

16 A. Yes.

17 Q. And he asked you about the equipment and how it might
18 relate to cost share?

19 A. Yes.

20 Q. Let's pull up government exhibit 40A, 40A. Let's focus on
21 line I.

22 Ms. Riley, what information is called for on line I of
23 government exhibit 40A?

24 A. Cost share.

25 Q. And what information is reflected -- what number is

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Riley - redirect

1 reflected on line I?

2 A. Zero.

3 Q. If we could zoom out of --

4 THE COURT: This is 40A?

5 MR. KWOK: 40A, your Honor.

6 THE COURT: And this is submitted by -- this isn't
7 your record, this is submitted by CASI?

8 THE WITNESS: Yes.

9 Q. Who submitted this form?

10 A. Yes, CASI submits this form to us.

11 THE COURT: All right.

12 Q. Could we zoom in on the signature block on the bottom of
13 that? Whose signature appears on the bottom of that form?

14 A. Dr. Karron.

15 Q. Let's go to government exhibit 41A. Let's zoom into line

16 I. Again, what information is called for on line I?

17 A. Cost share.

18 Q. What is the number there?

19 A. Zero.

20 Q. Let's zoom out. Go to the second block. What signature
21 appears in the bottom?

22 A. Dr. Karron's.

23 Q. Go to 42A. What is the number shown for line I in 42A?

24 A. Zero.

25 Q. And what signature appears on the bottom portion of that

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866zkar4 Riley - redirect

1 form?

2 A. Dr. Karron.

3 Q. Go to 43A, line I?

4 A. Zero.

5 Q. Signature block, what signature appears there?

6 A. Dr. Karron's.

7 Q. Now, Ms. Riley, one last thing. Could you read the
8 certification above the signature block?

9 A. I certify, to the best of my knowledge and belief, that
10 this report is correct and complete and that all outlays and
11 unliquidated obligations are for the purposes set forth in the
12 award documents.

13 MR. KWOK: No further questions.

14 RE CROSS EXAMINATION

15 BY MR. RUBINSTEIN:

16 Q. When you consulted with Mr. Spitz in December of 2003, did
17 he discuss with you the meals issue?

18 A. I don't recall.

19 Q. Well, under the budget, isn't it a fact that there is a
20 category called "others"?

21 THE COURT: This is beyond the scope.

22 MR. KWOK: Objection.

23 MR. RUBINSTEIN: I submit it's not. It was asked
24 about meals and whether there's a line item in the budget about
25 meals.

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Riley - recross

1 THE COURT: That is, the scope of the direct did not
2 have anything to do with meals.

3 MR. RUBINSTEIN: Yes.

4 THE COURT: Just go right ahead.

5 MR. RUBINSTEIN: Your Honor --

6 THE COURT: We have gone through meals already.

7 MR. RUBINSTEIN: I know that.

8 THE COURT: You are instructed not to go beyond the
9 direct. That is an order of the Court, that is a rule of
10 trials.

11 MR. RUBINSTEIN: Absolutely, Judge.

12 THE COURT: You are to confine yourself to the
13 redirect of the government.

14 MR. RUBINSTEIN: Right. But I submit, your Honor, if
15 you look at the transcript --

16 MR. KWOK: Objection.

17 MR. RUBINSTEIN: I just asking your Honor to look at
18 the transcript.

19 THE COURT: Don't argue about it. You have an
20 instruction. If you want a sidebar, you can have it.

21 MR. RUBINSTEIN: Yes, your Honor.

22 (Continued on next page)

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Riley - recross

1 (At the sidebar)

2 MR. KWOK: Your Honor, in my redirect I didn't ask a
3 single question about the audits. I simply asked a question
4 about whether line item -- where meals are a line item on the
5 budget, that's all I asked. I didn't go into audits, I didn't
6 go to meals, I don't know where he's going. On recross, he's
7 going to take another hour if we go this way.

8 MR. RUBINSTEIN: With their directs they shouldn't
9 complain. Your Honor should complain, but not them.

10 All right. They asked about meals, and I'm asking her
11 whether or not --

12 THE COURT: They didn't ask meals.

13 MR. RUBINSTEIN: Yes, they did. They said is there a
14 line item for meals.

15 THE COURT: They didn't ask.

16 MR. RUBINSTEIN: They did.

17 MR. EVERDELL: That's all I asked. I did ask that
18 question, but I just asked --

19 THE COURT: Did you, a line item? I didn't hear the
20 meals.

21 MR. RUBINSTEIN: So I'm asking if --

22 THE COURT: All right.

23 MR. RUBINSTEIN: I can go into this.

24 THE COURT: I'll allow it.

25 (Continued on next page)

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Riley - recross

1 (In open court)

2 THE COURT: I thought the question was allowed with
3 respect to Exhibit 140. Is that the exhibit that the question
4 was asked about? No, not 140. I'm sorry.

5 THE DEPUTY CLERK: 114 and 115.

6 THE COURT: 114 and 115.

7 With respect to 114 and 115, I will allow it.

8 BY MR. RUBINSTEIN:

9 Q. Now, there is a category called others, is there not --

10 A. Yes.

11 Q. -- Ms. Riley?

12 A. Yes.

13 Q. And is it a fact that meals could be classified under the
14 line item called others?

15 THE COURT: The question isn't whether it could be.
16 The question is was it.

17 A. It was not.

18 Q. Was it?

19 A. It was not.

20 Q. What was listed under others?

21 A. Auditing services.

22 Q. Pardon?

23 A. Auditing services.

24 Q. And what else?

25 A. Under others? That's all I recall.

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Riley - recross

1 Q. Now --

2 A. I mean for what, for what? On the budget? The budget was
3 for auditing. Classified -- allowed for others, other cost in
4 the budget was audit costs. That was the only thing that was
5 allowed in the budget.

6 Q. There is a category called others. Is there a category
7 called audits, yes or no?

8 A. No.

9 Q. Is there a category called others, yes or no?

10 A. Yes.

11 Q. And can meals be considered under the category "others" if
12 it relates to the project?

13 THE COURT: There is a category called audit, isn't
14 there?

15 THE WITNESS: There's others, yes.

16 THE COURT: Audit I said.

17 THE WITNESS: Oh, it was -- they -- no -- well, on
18 our, my chart may have a cost, but.

19 THE COURT: A chart has it?

20 THE WITNESS: The chart has --

21 THE COURT: What?

22 THE WITNESS: The chart has that category.

23 THE COURT: Look at the chart, look at the exhibit I'm
24 talking about when you answer the question. Don't just dream
25 about something else.

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Riley - recross

1 THE WITNESS: I thought we were talking about budget.

2 THE COURT: Not talking about budget, we're talking
3 about the exhibit.

4 THE WITNESS: Okay.

5 THE COURT: All right, the question that was asked
6 was about the exhibit 104 -- 114.

7 THE DEPUTY CLERK: 114.

8 THE COURT: 114.

9 THE WITNESS: 114.

10 THE COURT: And 115, those are the only questions.

11 THE WITNESS: Okay.

12 THE COURT: Now, you got a question, Mr. Rubinstein?

13 MR. RUBINSTEIN: Did we get an answer? That's all

14 I --

15 THE COURT: Well, I don't know what the question was.

16 MR. RUBINSTEIN: Well, the question was could meals
17 that are had relating to NIST ATP business meetings, can they
18 be allowable under the budget line others, yes or no.

19 THE COURT: You can ask about 114 and 115, that's all.

20 Q. Well, ma'am, you testified as to 41A, 42A and 43A, correct?

21 THE COURT: Yes, she did.

22 A. Yes.

23 Q. Line I?

24 A. Yes.

25 Q. And is that what you would utilize to make a determination

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Riley - recross

1 that the equipment could not be utilized as a cofunding
2 contribution?

3 MR. KWOK: Objection.

4 THE COURT: Let me get the exhibit. Objection
5 sustained. This document was filed by Dr. Karron. She didn't
6 prepare it. Dr. Karron prepared it.

7 MR. RUBINSTEIN: I asked if she --

8 THE COURT: Go ahead.

9 MR. RUBINSTEIN: If she utilized it.

10 THE COURT: All we're talking about is line I, that's
11 all.

12 MR. RUBINSTEIN: Yeah, that's what I'm talking about.
13 Well, all right, Judge.

14 THE COURT: All right, the document was not prepared
15 by this witness. The document was prepared by Dr. Karron,
16 apparently. She cannot answer what was in that or should or
17 should not have been in that line.

18 MR. RUBINSTEIN: That wasn't the question, Judge. The
19 question was, did she review that to make a determination.
20 They brought it out on redirect like she had used that to make
21 her determination.

22 MR. KWOK: Objection.

23 THE COURT: I don't -- objection sustained.

24 Q. What were you asked about 41A, ma'am, by the Prosecutor?

25 MR. KWOK: Objection.

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Riley - recross

1 THE COURT: Objection sustained.

2 MR. RUBINSTEIN: I'm asking her exactly what she was
3 asked.

4 THE COURT: We all heard what she was asked her.

5 MR. RUBINSTEIN: Objection.

6 THE COURT: She doesn't have to reply to that
7 question, now go ahead and ask a question if you're going to
8 ask one or the cross-examination, recross is over.

9 MR. RUBINSTEIN: With all due respect, Judge, could I
10 have a sidebar?

11 THE COURT: No, you may not at this point. The rules
12 apply to recross-examination and they're going to be strictly
13 adhered to, in light of the lengthy lengthy cross-examination
14 we've already heard.

15 MR. RUBINSTEIN: I'm going to ask for a limiting
16 instruction to the jury, your Honor, on that comment by your
17 Court. I think it was, in all due respect --

18 THE COURT: I don't know what to instruct them. All
19 I'm doing is stating the facts. If you want to have a sidebar
20 on that, I'll take a sidebar on that.

21 MR. RUBINSTEIN: Yes, your Honor.

22 (Continued on next page)

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866zkar4

Riley - recross

1 (At the sidebar)

2 THE COURT: If I got annoyed enough so I made some
3 misstatements, I'll correct it, but otherwise the rule is, and
4 you know it very well, that recross cannot exceed the redirect.

5 MR. RUBINSTEIN: I agree, Judge.

6 THE COURT: The scope.

7 MR. RUBINSTEIN: I agree, Judge. But when the
8 government, A, brings out is there a line item for meals and
9 she says no, I think I have a right to ask if it could come
10 under the category others, that's number one. Number two, when
11 the government --

12 THE COURT: A line.

13 MR. RUBINSTEIN: -- brings out --

14 THE COURT: The inquiry, I believe, was was there a
15 meals category or a meals -- a figure for meals in those two
16 exhibits. She said no.

17 MR. RUBINSTEIN: They were asked specifically, Judge,
18 whether there's a budget line for meals. That's what they
19 asked. It's misleading because it doesn't have to be. It
20 could be under others and I feel I have a right to straighten
21 it out.

22 THE COURT: You can bring -- you brought that out.

23 MR. KWOK: You went past that already.

24 MR. RUBINSTEIN: You objected to it and you sustained
25 it.

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Riley - recross

1 THE COURT: We're here to --

2 MR. RUBINSTEIN: Okay.

3 THE COURT: -- based on your wanting me to correct
4 something that I may have said to the jury.

5 MR. RUBINSTEIN: Yes. The second that -- yeah, that
6 your Honor suggested that it was inappropriate for counsel to
7 cross-examine the length he did, particularly in view of the
8 fact that you limited me to --

9 THE COURT: It's not --

10 MR. RUBINSTEIN: -- in the kind and I don't think that
11 the jury -- that counsel has an absolute right to cross-examine
12 just as the government has a right --

13 THE COURT: You got --

14 MR. RUBINSTEIN: -- to show the same exhibits through
15 every witness, show the same exhibit on the screen. I
16 shouldn't be -- and as to the letter I in 40, in the A's
17 exhibits in the 40s, it says total --

18 THE COURT: The cost share.

19 MR. RUBINSTEIN: Share. So they are suggesting that
20 because there's nothing in here that she couldn't consider it.
21 She never considered this document, Judge. She never
22 considered it.

23 MR. KWOK: I never suggested that. I just asked her
24 what the document says.

25 THE COURT: She --

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Riley - recross

1 MR. RUBINSTEIN: What was the purpose of it?
2 THE COURT: To show there was no dispute.
3 MR. RUBINSTEIN: Pardon?
4 THE COURT: To show there was no dispute about that
5 item.
6 MR. RUBINSTEIN: But she considered it.
7 MR. KWOK: Who said she considered --
8 THE COURT: No one said she considered it.
9 (Continued on next page)

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Riley - recross

1 (In open court)

2 MR. RUBINSTEIN: Can I ask the Court Reporter if that
3 was answered, that question about the meals was asked answered?

4 THE COURT: No.

5 MR. RUBINSTEIN: Could I ask it again?

6 THE COURT: You can ask another question, not that
7 one.

8 MR. RUBINSTEIN: You said at the sidebar I could ask
9 it.

10 THE COURT: What?

11 MR. RUBINSTEIN: You said at the sidebar, I could ask
12 it.

13 THE COURT: I didn't say that.

14 BY MR. RUBINSTEIN:

15 Q. In the exhibits, government Exhibit 114 --

16 THE COURT: Go ahead.

17 Q. The government asked you questions about 114, correct?

18 THE COURT: Yes.

19 Q. By your --

20 THE COURT: If it's within the scope of the redirect.
21 We're not going to go over all of 114 and start all over again.

22 MR. RUBINSTEIN: I don't intend to, Judge.

23 Q. By your red portion of the circles, Dr. Karron owes three
24 times the amount of money that he received, right; is that
25 correct?

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Riley - recross

1 MR. KWOK: Objection.

2 THE COURT: I don't understand the question. You want
3 to point to something in Exhibit 114 or 115, you can, but the
4 questions you're asking call for computations.

5 Q. How much, according to these red circles on Exhibit 114 and
6 115, how much does Dr. Karron, according to you, owe NIST ATP?

7 A. According to the red circles? It would be 268,000 plus --

8 Q. Pardon?

9 A. -- 196.

10 Q. What?

11 A. 268,000 plus 196,000 is how much CASI would owe back.

12 MR. RUBINSTEIN: I'm sorry, Judge.

13 Q. Did you say 196?

14 THE COURT: Talking about what CASI owes or what Dr.
15 Karron owes?

16 THE WITNESS: CASI, right. Dr. Karron would be --
17 what CASI owes.

18 Q. And what does Dr. Karron owe?

19 THE COURT: What's the rest of your question? You're
20 asking what Dr. Karron owes, according to Exhibit 114?

21 MR. RUBINSTEIN: 115.

22 THE COURT: 115?

23 MR. RUBINSTEIN: Either one.

24 THE COURT: Which one?

25 MR. RUBINSTEIN: They're related. I can't tell.

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Riley - recross

1 Q. I want to know between these two exhibits, if we could find
2 out how much she claims Dr. Karron has in unallowable expenses?

3 A. This shows the CASI unallowable expenses.

4 THE COURT: Just Dr. Karron, just Dr. Karron, that's
5 all you were asked. You're looking at Exhibit 114.

6 MR. RUBINSTEIN: I have no further questions, your
7 Honor.

8 MR. KWOK: Two questions, your Honor, two questions.

9 THE COURT: How are you going to be in the scope? All
10 right.

11 MR. KWOK: Within the scope.

12 THE COURT: It's got to be within the scope.

13 REDIRECT EXAMINATION

14 BY MR. KWOK:

15 Q. Can you pull up government Exhibit 110B, page seven?

16 THE COURT: Wait a minute. Where are we going now?
17 It's a different exhibit. That's not within the scope. It's
18 not allowed.

19 MR. KWOK: Final question.

20 Q. Ms. Riley, in your review of all the checks, who signed all
21 those checks for CASI?

22 MR. RUBINSTEIN: Objection, your Honor, beyond the
23 scope.

24 THE COURT: Objection sustained.

25 All right. You're excused. Next witness.

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Riley - redirect

1 MR. EVERDELL: Your Honor, the government calls Frank
2 Spring.

3 FRANK SPRING,
4 called as a witness by the government,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. EVERDELL:

8 THE COURT: Please, go ahead.

9 Q. Good afternoon, Mr. Spring.

10 A. Hello.

11 Q. What do you do for a living?

12 A. I serve as a consultant working on bookkeeping and other
13 financial activities for a number of clients.

14 Q. What do you mean by bookkeeping?

15 A. Well, these are -- generally, I work with small businesses
16 and they have various bookkeeping needs, keeping track of their
17 income and expenses.

18 Q. How long have you been doing that kind of a work?

19 A. For, as a freelance consultant, eight years.

20 Q. And do you work alone or do you work for a company?

21 A. I am subcontracted by a gentleman called Ken Jackson, who
22 owns a company called the Jackson Group, which specializes in
23 services like this.

24 Q. And how long have you been working as a subcontractor for
25 Jackson Group?

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Spring - direct

1 A. Since the year 2000.

2 Q. What sorts of clients do you have in doing your work?

3 A. Most of the clients I work for currently are small
4 businesses, which is to say they might be grossing about a
5 million, a million-and-a-half dollars a year. We also work for
6 individuals.

7 Q. And do companies that you deal with as clients typically
8 come to you at any particular point in the life of their
9 company?

10 A. Yes. Frequently the companies that come to us, and the
11 individuals, might be using the computer systems or software
12 systems that we specialize in, and they find that things are
13 going wrong, they don't understand how to use the system, or
14 their in-house bookkeeper has not been doing the job to the
15 company's satisfaction.

16 Q. And what are those systems that you're referring to?

17 A. There are two that we specialize in, both made by the same
18 company; intuit, and you might be familiar with the names
19 Quicken is one of them which is advertised widely in this
20 country, it's kind of a brand name. That's used mostly for
21 following your personal finances, for tracking them. And then
22 the other system is called Quick Books, and that's generally
23 used for small businesses.

24 Q. Mr. Spring, do you have any formal training in accounting?

25 A. Well, what we do is not accounting. What we do is

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1 bookkeeping, which is substantially different. In fact, part
2 of the job of a good bookkeeper is in fact to prepare financial
3 data come tax time, so that the accountant, who is the person
4 actually doing the tax report, can do it in the most accurate
5 way possible.

6 Q. What training did you receive in bookkeeping?

7 A. Mostly -- well, there are two aspects to that. Since 1980,
8 I am a small business, small company owner myself. And
9 starting in 1980 I've set up four companies, I've owned four
10 companies over the years. And as part of that business, either
11 as full owner or co-owner of those companies, I was responsible
12 for the financial dealings of the company, the day-to-day
13 bookkeeping, the financial planning, the budgeting, et cetera.

14 And then when I started acting, doing consultancy
15 services for Mr. Jackson, I was trained extensively by him.

16 Q. How long did you do the, your companies for?

17 A. Oh, we set up -- my partner and I set up our first company
18 in 1980.

19 Q. Mr. Spring, did there come a time when you met someone
20 named Dr. Karron, Dr. Daniel Karron?

21 A. Yes.

22 Q. Do you see Dr. Karron here in the courtroom today?

23 A. I do.

24 Q. Would you please point him out and identify an article of
25 clothing he's wearing?

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1 A. It's the gentleman over there wearing a light colored tie
2 and a flag pin, if my eyes are holding up.

3 MR. EVERDELL: May the record reflect the witness has
4 identified the defendant?

5 THE COURT: Yes, the witness has identified the
6 defendant.

7 Q. Mr. Spring, how did you first meet the defendant?

8 A. I was introduced to him by Mr. Jackson.

9 Q. And what was the occasion for that meeting?

10 A. The first meeting, I was asked to come and meet with Dr.
11 Karron, as there were some bookkeeping needs he need attending
12 to for the project he was working on at the time.

13 Q. Do you know what project that was?

14 A. It was the ATP.

15 THE COURT: Could we have date?

16 Q. Do you recall the date of that meeting, roughly?

17 A. I began working on the ATP project in July, late July of
18 2002. And if memory serves correct, it would have been shortly
19 before then, because his needs were immediate.

20 Q. Was this the first time that the defendant had sought out
21 the services of the Jackson Group?

22 A. No.

23 Q. Can you explain?

24 A. Ken Jackson and the Jackson Group had worked previously
25 with CASI on a project called DARPA, and that would have been,

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Spring - direct

1 I believe that was about two or three years before the ATP
2 project.

3 Q. Can you say again when you were hired by CASI?

4 A. July of 2002.

5 Q. And how long did you work for CASI?

6 A. Up through October of 2003, about 15 months.

7 Q. Were you paid for your work?

8 A. I was.

9 Q. What were you asked to do, generally, when you were hired
10 by CASI?

11 A. Well, when I was hired by CASI, there was already an
12 in-house bookkeeper working on the ATP project, so I wasn't
13 initially involved in the day-to-day activities, normal
14 activities of a bookkeeper, you know, inputting invoices,
15 writing checks, paying staff, et cetera. But there was a --
16 one of the requirements, one of the requirements of the ATP
17 project was that there was an audit at the end of the first
18 year. This was simply a requirement of the project. And I
19 started working for CASI about ten months into that first year,
20 so the audit was coming up and I was asked to come in and
21 assist on preparing the books for the audit.

22 Q. And who is conducting that audit?

23 A. That would've been Joan Hayes.

24 Q. Now, when you were hired to participate in the audit, what
25 was the first thing your -- oh, withdrawn.

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Spring - direct

1 When you were hired, did you learn who had been
2 responsible for keeping the books before you arrived?

3 MR. RUBINSTEIN: Objection, your Honor.

4 THE COURT: There was someone working there. Did you
5 meet the person working there?

6 THE WITNESS: No, your Honor. There was -- well,
7 there was a young woman, Niki Winters who had been working on
8 the project books before I entered the scene, and continued to
9 work on the books for I believe another three or four months,
10 after I started at the end of July of 2002. Previous to that,
11 I believe --

12 MR. RUBINSTEIN: I object.

13 THE COURT: Objection sustained.

14 Q. Did you have any conversations with the defendant about who
15 kept the books prior to you being there?

16 A. Yes, I did.

17 Q. And what was the nature of those conversations?

18 A. Well, I asked who had been doing them, and the books were
19 in two separate systems, and so I inquired as to how those were
20 done. And I was told by the defendant that he had been
21 responsible for some of it, and that there had been other
22 bookkeepers in the past.

23 Q. What were those two systems that you referred to that the
24 company used?

25 A. Well, the same company, Intuit, makes these two systems

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Spring - direct

1 which I mentioned a few minutes ago. One is this thing called
2 Quick Books, which is good for small businesses, and then the
3 other one is called Quicken, which you see advertised maybe a
4 lot on television and that kind of thing. That is more
5 suitable for households and personal stuff.

6 THE COURT: What ones were they using; what system,
7 what were these two systems?

8 THE WITNESS: The CASI and ATP affairs were being run
9 out of Quick Books, and then Quicken was being used to track
10 the defendant's personal finances.

11 Q. And did you have any discussions with the defendant about
12 the particular systems that he was using?

13 A. To the extent that I had to become familiar with the way
14 the information had been inputted up to my coming into work on
15 these systems, and we started by looking at the personal side
16 of things, which was held within the Quicken software.

17 Q. And what were you asked to do with respect to the personal
18 side of things in the Quicken software when you arrived?

19 A. I was asked by the defendant to go into those systems, and
20 on the very first day that I was there he sat me down in front
21 of Quicken, in front of the computer and he navigated me
22 through the Quicken books, the personal finances, and asked me
23 to extract certain kinds of expenses from that, that I was told
24 would be charged back to the ATP project.

25 Q. And do you recall what sorts of expenses those were?

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1 A. Well, there are a number of kinds of categories. There
2 were things in the order of medical expenses, equipment, local
3 travel, meals, et cetera, smaller items like that.
4 Q. And who told you that these would be ATP allowable expenses
5 when you were asked to do this?
6 A. I was told by the defendant.
7 Q. And do you recall when these expenses were incurred?
8 A. I was asked by the defendant to go back to April of 2002 to
9 extract some of these expenses.
10 Q. Are you certain about the date April 2002?
11 A. I am. I -- the project started -- I beg your pardon. I am
12 getting my years wrong. I began in September of 2002. The
13 project had been going on for ten months. It was 2001,
14 April 2001.
15 Q. So were the charges -- just to be clear, you were asked to
16 go back to April 2001 to look at the charges?
17 A. Right, right. The project itself started in October of
18 2001. So, basically, I was being asked to go back
19 four-and-a-half, five months before the start of the project to
20 extract expenses.
21 Q. And did you have any discussions with the defendant about
22 extracting those expenses prior to the start of the grant?
23 A. Well, to the extent that it seemed unusual to me. At this
24 point I was -- this is really literally my first week or so.
25 THE COURT: Did you have any discussions with the

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1 defendant is what you were asked, not what was going on in your
2 mind.

3 A. Well --

4 THE COURT: Did you have discussions with him about
5 it, yes or no?

6 THE WITNESS: No. I did what I was told, basically.
7 I had no reason to think that if I was asked to go back to
8 April --

9 THE COURT: No was the answer. Let's go ahead.

10 A. No.

11 Q. After extracting the data from the personal system, what
12 did you do with that data?

13 A. Well, the data was extracted by, basically, two methods.
14 One would generate reports using the software, which would
15 detail what these expenses were, and then those would be
16 transferred via one method or another into Quick Books, which
17 was tracking the ATP expense, as well as the CASI expenses.

18 Q. And when all the data was in the corporate Quick Books
19 system, what, if anything, did you do to the Quick Books
20 system?

21 A. The Quick Book system, I then began to generate what we
22 would call income and expense statements or profit and loss
23 statements that showed the activity for the previous 10 or 11
24 months at that point.

25 Q. And what, if anything, did you do with the expenditures

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1 that were reflected in the Quick Book system?

2 A. There were number of groups of expenses. This would've
3 been -- I would have been working several weeks now on the
4 project and I began to -- I had begun to understand what we
5 were, you know, allowable ATP expenses from expenses that were
6 not allowed by the project. And my basic job was to separate
7 out the two, those things we could allow for the project to pay
8 for, and those things we could not.

9 Q. And how did you become familiar with what was allowable and
10 what was not allowable?

11 A. I read the regulations.

12 THE COURT: You say you red the regulation?

13 THE WITNESS: Yes, sir.

14 THE COURT: What did you look at?

15 THE WITNESS: If memory serves correct, it was about a
16 30 page document produced by ATP which said, basically, these
17 are the dos and don't, what was allowable expense and what
18 wasn't.

19 Q. Did you have any other help in deciding what was allowable
20 and what was not allowable?

21 A. Well, this is several weeks after I had started, maybe
22 again four or five weeks. And at that point Joan Hayes and, I
23 because the audit was imminent and she was asking to have data
24 presented to her, so she had began begun to point out to me
25 certain things that were not, by her definition, allowable.

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1 But by this point I had also read the document. And Joan Hayes
2 and I also reviewed the document to make sure that we both
3 understood what was an allowable expense and what wasn't.

4 Q. And by document, you're referring to the document?

5 A. The regulation, yes.

6 Q. Did you have any discussions with the defendant about
7 whether certain expense would be classified as ATP related
8 expenses versus non ATP related expenses?

9 A. I did question a number of things as my familiarity with --

10 THE COURT: You're asked --

11 THE WITNESS: Yes.

12 THE COURT: You were asked whether you had a
13 conversation with the defendant.

14 THE WITNESS: Yes.

15 THE COURT: It calls for yes or no answer.

16 THE WITNESS: Yes.

17 Q. What was the nature of those discussion you had with the
18 defendant?

19 A. Well, I, as I became more familiar with what was an
20 allowable expense and what wasn't, I began to question why
21 certain expense categories were being classed one way or the
22 other; generally, why they were being classed as an allowable
23 expense.

24 Q. And what sorts of expenses did you question with the
25 defendant?

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1 A. Oh, a range of things; rent, utilities, certain amounts on
2 capital expenditures, business, you know, medical expenses.

3 Q. And what -- withdrawn. What, if anything, did Dr. Karron
4 do if he disagreed with your classification of whether they
5 were ATP or non ATP related expenses?

6 A. Well, he would point out to me that I either didn't know my
7 job, I didn't understand what an ATP allowable expense was or
8 wasn't, or that he was in conversation with the ATP managers in
9 Washington to ensure that these expenses, which I understood to
10 be not allowed by the project, would be allowed into the
11 project as an expense.

12 Q. Did you see anything in particular reflected in the books
13 regarding these conversations you had with the defendant?

14 A. Well, as the kind of person in charge of keeping the Quick
15 Books file correct, I took it upon myself to take what was an
16 allowable expense and put it into that category, and if it was
17 not allowed into ATP, to put it into the general CASI expenses.

18 Q. And what, if anything, would the defendant do after you did
19 that?

20 A. Normally I would go away -- I didn't work at the office
21 every day, it would be up to three days a week on afternoon.
22 And I would do my work in the office, go away, probably for a
23 couple of days, come back for my next session and find out that
24 the expenses that I had taken out of ATP, turned them back into
25 a CASI only expense, had been turned -- had been reinputted as

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1 an ATP allowable expense.

2 Q. And did you have any discussions with the defendant about
3 who had done that?

4 A. I did.

5 Q. And what were these discussions?

6 A. He told me he had done it.

7 Q. And did he tell you why he had done it?

8 A. Yes. Rather like I, what I said a few minutes ago, I
9 didn't, either didn't know what I was doing, or the ATP
10 managers would allow these expenses or I didn't, I didn't
11 understand the ATP regulations.

12 THE COURT: That he wouldn't allow it or hadn't
13 allowed it, the ATP manager?

14 THE WITNESS: No, your Honor that I had taken, that I
15 had taken out something out of the ATP and put it into a
16 general CASI expense, and that he would then take that and put
17 it back into ATP.

18 THE COURT: I got that part. I'm talking about the
19 conversation afterwards. Did he say that they were -- had been
20 approved by --

21 THE WITNESS: He said they were in the process of
22 being approved, and that he would be having meetings with the
23 ATP managers to clear up all of these matters that I was
24 questioning.

25 Q. About how many times did you notice changes like this

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1 occurring in the books?

2 A. I never did an exact count, but I would say somewhere
3 between one dozen and two dozen times.

4 Q. Do you remember any particular incident, conversation with
5 the defendant about this issue?

6 A. Oh, yes, things would get very heated. Because it was like
7 a tennis game. I would do what I -- would follow the
8 regulations, take it out of ATP, come back a few days later, it
9 was back in ATP. I go away again, bang, bang, bang like this.
10 And after a couple of months of this happening, it reached a
11 kind of a fever pitch where I actually walked out of the
12 client's apartment which in what is now close to 40 years of
13 being in business and providing professional services --

14 MR. RUBINSTEIN: I move to strike that portion, your
15 Honor.

16 THE COURT: Objection sustained. You can't go into
17 how long you've been in business.

18 THE WITNESS: Okay.

19 THE COURT: The jury will disregard that part of it.

20 Q. You said you walked out, Mr. Spring?

21 A. Yes.

22 Q. Did you ever return to CASI?

23 A. I did.

24 Q. Why did you return?

25 A. Well, I provided service to client, and I've always taken

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1 my clients as they are the people that come first. And as part
2 of my job to help them in, to do my job, the job I was asked to
3 do. The reason I had walked out is that I was being asked to
4 do a job and then being prevented from doing it at the same
5 time.

6 Q. All right. I'd like you to take a look at what's in front
7 of you Government's exhibits 144, what's been marked for
8 identification, not yet in evidence as Government's exhibit
9 144, 145, and 149. Can you pull those out, please. You can
10 take a look at each of those in succession, please?

11 THE COURT: Bear with us. You can't look at the
12 documents yet, all right. They're not admitted in evidence.

13 Q. Do you see those documents, Mr. Spring?

14 A. I do.

15 Q. Do you recognize those documents?

16 A. I do.

17 Q. What are they?

18 A. These are a series of e-mail chains from or to -- either
19 from or to myself to the defendant.

20 Q. And how do you recognize them?

21 A. My name is on them.

22 Q. And can you give a basic date range for these e-mail
23 strings?

24 A. November through, say, early December of 2002.

25 MR. EVERDELL: Your Honor, the government offers

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1 Government's exhibit 144, 145 and 149.

2 MR. RUBINSTEIN: No objection, your Honor.

3 THE COURT: All right 144, 145 and 149 are admitted in
4 evidence.

5 (Government's Exhibits 144, 145 and 149 received in
6 evidence)

7 Q. Let's first take a look at government's 144.

8 THE COURT: Do we have a date? I see.

9 Q. Since these are e-mail strings, we're actually going to go
10 backwards to forward, the early ones what begin in the back.
11 So if you could turn, please, to page three of Government's
12 144?

13 A. Uh-huh.

14 Q. You see that e-mail, page 3, 144?

15 A. Yes, yes. Sorry.

16 Q. And do you see the date of that e-mail?

17 A. Yes.

18 Q. What's that?

19 A. November 29th, 2002.

20 Q. And who sent the e-mail and who is it to?

21 A. It is from the defendant to myself.

22 Q. All right. If you could look and just read the first few
23 sentences up to, I put the pay-pal stuff?

24 A. This is from the defendant. I found a number of errors in
25 the program non-program splits. We need to fix this. I also

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1 have problems with the entire way you are splitting the costs
2 between ATP and non-ATP. We need to fix this, as stuff is
3 falling in the cracks and there can be no cracks for items
4 missing.

5 Q. What did you understand the defendant to mean about ATP
6 versus non-ATP splits that he was discussing there?

7 A. It's a continuation of the work I had started doing, where
8 having become familiar with the regulations by this point in
9 the project.

10 MR. RUBINSTEIN: Objection, and I move to strike this,
11 your Honor. It's not responsive.

12 THE COURT: Let me hear the question.

13 Q. What was your understanding, Mr. Spring, as to what was
14 meant by the problems he was having with your splitting the
15 cost between ATP and non-ATP?

16 A. Well, he didn't agree with the way, with what I was saying
17 was ATP allowable and what wasn't. As simple as that.

18 Q. All right. If you could move now to page two, which is the
19 page before that.

20 THE COURT: It's the page after, but it's the day
21 before, the message after that. All right.

22 MR. EVERDELL: The message after that, even though
23 it's the page before.

24 Q. If you could look at the e-mail at the bottom of that page.

25 A. Uh-huh.

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1 Q. And it is one from yourself to Dr. Karron, is that correct?

2 A. It is.

3 Q. And is that your response to that previous e-mail we just
4 read?

5 A. It is.

6 Q. Could you read the last two paragraphs of your response,
7 second two paragraphs of your response?

8 A. I rather doubt your conclusion about the number of errors
9 in my division of ATP and non-ATP costs. I have tried to
10 squeeze everything that is chargeable, and then some, into ATP.
11 Example: I tried to get through payments you made to Jill
12 Feldman at the beginning of 2002, and Pennie & Edmonds.
13 However, Joan's eagle eye caught these and is unlikely to allow
14 them to get through, particularly the legal fees which go back
15 to patent issues related to 1998-1999. Joan made extensive
16 notes yesterday relating to these and many other things she
17 wants to take a closer look at so some of what you want to do
18 she should be involved in. Otherwise, there is nothing but
19 more time, and money, expended putting items in, then taking
20 them out, then putting them in, ad nauseam.

21 Q. All right. Let's take a look at individual things in
22 there. You say -- first, do you recall who Jill Feldman is?

23 A. Yes. She is an accountant that CASI had used previously.

24 Q. And do you recall Pennie & Edmonds, what that was?

25 A. Yes, they, they are a law firm who were working on patent,

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1 these patent issues I referred to later in the paragraph.

2 Q. You mentioned that you were trying to squeeze everything
3 that is chargeable into ATP; what did you mean by that?

4 A. Right. We -- well, I was willing to give the defendant the
5 benefit of the doubt with his continually telling me he was
6 going to get these charges approved by the ATP managers, so I
7 would leave things in in the hopes that they would get
8 approved.

9 Q. You see in the second paragraph that you read, your comment
10 that there's nothing but more time money expended putting items
11 in and taking them out, putting them in ad nauseum; you see
12 that?

13 A. Yes.

14 Q. What did you mean by that?

15 A. Well, as I alluded to previously --

16 THE COURT: It's what you're referring to previously,
17 is that right?

18 THE WITNESS: That's right, your Honor.

19 THE COURT: All right, next question.

20 Q. All right. If you could turn to the previous page, which
21 is actually the next e-mail response to your e-mail, from the
22 defendant. If we could blowup that e-mail. If you would look,
23 please, at the second grouping there, that looks like a
24 paragraph?

25 THE COURT: What date are we talking about?

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866zkar4

Spring - direct

1 Q. What's the date of that e-mail, Mr. Spring?

2 A. November 30th, 2002.

3 Q. Is that the day after the -- well, is that the same day as
4 the e-mail that we just read?

5 A. It is the same day. The previous e-mail was written at
6 9:00 o'clock in the morning on Saturday. This e-mail you're
7 referring is now was written at a little after 2:00 p.m. on
8 that same day.

9 Q. Would you please read that second paragraph, the
10 defendant's response?

11 A. Right. This is from the defendant. You and she need to
12 keep grinding away on disallowed items. Power, Jill Feldman,
13 Solomon and Bernstein, Peter Berger, et cetera, et cetera, et
14 cetera, are all actually and partly allowable. Rent, some
15 cable, some telephone are not yet allowed. I may get an
16 allowance on rental of the living room to the project, as it is
17 clearly completely taken over by the project.

18 Q. Say again what's the date of that e-mail was?

19 A. November 30th, 2002.

20 Q. So about how long after the start day of the grant was that
21 e-mail sent by the defendant?

22 A. The grant started in October -- on October 1st, 2001, so by
23 this date, end of November of 2002, we are into the second
24 month of the, of fiscal year two, 14 months after the start of
25 the project.

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Spring - direct

1 Q. To your knowledge, did the defendant ever get an allowance
2 for rent and utilities, things like that, from the people at
3 ATP?

4 A. No.

5 Q. All right. Now if you would look at Government's 145 and
6 149. Starting with 145. Without putting it on the board, if I
7 just take a look at. Are these e-mails, 145 and 149, part of
8 the same e-mail chain, or are they a brand new e-mail chain?

9 A. These are actually part of the same chain. They're dated
10 the day before, November 29th, 2002.

11 Q. Let's look at Government's 145, page two. I'm sorry, if we
12 could look at page three, first.

13 Just identify this to orient ourselves, that e-mail
14 that you sent to Dr. Karron, is that the one we read before,
15 about squeezing the charges into the ATP?

16 A. It is, on November the 30th.

17 (Continued on next page)

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19
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25

8667KAR5

Spring - direct

1 BY MR. EVERDELL:

2 Q. Now, if we could go to page 2, which is a later e-mail, the
3 previous page, and you see your response to Dr. Karron on the
4 bottom of the page there?

5 A. I do.

6 Q. If you could read, please, the second two paragraphs
7 starting with "hopefully".

8 A. "Hopefully, you will return from Washington with a clearer
9 idea of what they are going to allow and not allow as
10 chargeable items. This remains the biggest hang-up, with you
11 wanting to include everything (including the kitchen sink) and
12 Joan resisting you at every move, as she is doing her job to
13 the letter of the law, which I fully agree with.

14 "Saying that CASI can charge this and that item is all
15 very well, but Joan will want written confirmation of that from
16 the gals at NIST, and hopefully you will be able to get that
17 (or at least set the wheels in motion) when you are in D.C."

18 Q. Mr. Spring you referred to a trip to D.C. Who is going to
19 D.C.?

20 A. The defendant.

21 Q. And what do you mean when you say "hopefully you will
22 return from Washington with a clearer idea of what they are
23 going to allow"?

24 A. I am suggesting there that there was still the hope that he
25 would be able to get -- the defendant would be able to get

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Spring - direct

1 these items which were by the letter of the law nonchargeable
2 or nonallowable, he would somehow be able to get those into the
3 project.

4 Q. Was the defendant going to meet with people at NIST in
5 D.C.?

6 A. I believe so, with the project managers.

7 Q. What are you referring to when you are saying "they will
8 want written confirmation from the gals at NIST?

9 A. Well, it's very clear from the regulations and the
10 contract -- this was a government contract after all -- there
11 was nothing that one could just say, well, fine, somebody told
12 me this. It would have to be written because, you know, it was
13 going outside the standard regulations that I had reviewed.

14 Q. To your knowledge, did the defendant ever get written
15 approval from the people at NIST for these items?

16 A. To the best of my knowledge, no.

17 Q. If you could now look at Government's 149, and going to
18 page 2. First just to orient ourselves, do you see the e-mail
19 in the middle of the page from you to Dr. Karron?

20 A. I do.

21 Q. Is that the e-mail we just read from?

22 A. Yes.

23 Q. Now, could you look at Dr. Karron's response at the top of
24 the page.

25 A. OK.

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Spring - direct

1 Q. What's the first line of that response?

2 A. "I understand."

3 Q. All right. Mr. Spring, you mentioned rent payments, rent
4 charges you had noticed in the books. Is that right?

5 A. That's correct.

6 Q. Did you have any discussions with the defendant about rent
7 charges, in particular rent payments?

8 A. Well, I did. Especially -- I did. I did. Yes.

9 Q. And what was the nature of those discussions that you had
10 with the defendant?

11 A. That, you know, we had not received any written
12 confirmation or any other confirmation that these would be
13 allowable expenses, so they have to come out of an allowable
14 expense; and given that it was rent on the apartment, these
15 were things that would happen every single month, so the
16 conversation came up a lot, until finally it reached a climax
17 in one of our more heated debates, where the defendant told me
18 he would tell them, by which I think he meant the ATP managers
19 --

20 MR. RUBINSTEIN: Objection, your Honor.

21 THE COURT: Just give the statements, don't say what
22 you believed.

23 A. All right. The defendant told me he would tell the ATP
24 managers that he lived in Connecticut.

25 Q. Did the defendant in fact live in Connecticut, to your

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Spring - direct

1 knowledge?

2 A. Absolutely not.

3 MR. RUBINSTEIN: Objection. I move to strike that.

4 THE COURT: Well, the jury is not to -- the jury is to
5 disregard the conclusion of the witness that the defendant did
6 not live in Connecticut. It's hearsay. It would be based on
7 hearsay information.

8 Q. All right. Mr. Spring, besides the issue with the rent
9 that you just discussed, did you have any discussions with the
10 defendant about other expenses?

11 A. Yes, medical expenses for example; the cleaner, things
12 related to the rent, utilities, capital improvements on the
13 apartment, which was using ATP money.

14 Q. Let's start with medical expenses. What, if anything, did
15 you discuss with the defendant about medical expenses?

16 A. Well, a lot of the medical expenses went back to five
17 months before the start of the project, that he was getting ATP
18 to pay for. That was a big issue as I learned about the
19 regulations for the ATP project, you know, several weeks into
20 starting --

21 MR. RUBINSTEIN: I'm going to object to this. He has
22 not been qualified as an expert on the ATP regulations. It's
23 self serving.

24 THE COURT: The jury is instructed he is not an expert
25 on the ATP regulations; however, he may state what his

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1 understanding of those regulations was at the time.

2 A. May I continue?

3 Q. Yes, please.

4 A. My understanding of the ATP regulations was such that there
5 would be no employee benefits allowed to be paid for by ATP
6 such as medical expenses, if the recipient's company -- CASI in
7 this case -- did not have a formal employee benefits plan,
8 which CASI did not have.

9 Q. What sort of expenses did you talk to the defendant about?

10 A. On the medical expense side there was a large amount of
11 expenses to doctors, and one that got my immediate attention
12 was for electrolysis.

13 Q. How did you know it was for electrolysis?

14 A. The defendant when he was doing his own data entry had
15 noted these things as zapping.

16 Q. What is electrolysis?

17 A. That's when you have all of or some hair removed from your
18 body. Hair removal.

19 THE COURT: All these expenses were within the grant
20 period?

21 THE WITNESS: No, your Honor. A number of them
22 predated the start of the grant by four or five months.

23 Q. And what if anything did the defendant say to you when you
24 discussed these expenses with him?

25 A. I would get the usual refrain, which I already cited twice,

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1 which is that I didn't know what I was doing, I didn't
2 understand the ATP regulations, or that he was seeking approval
3 of these things after the fact from the ATP managers.

4 Q. All right. I want you to look at Government Exhibit 143,
5 which is not in evidence yet. Do you see that document?

6 A. I do.

7 Q. Do you recognize that document?

8 A. I do.

9 Q. What is it?

10 A. It's another chain of e-mails from the same time period.

11 Q. Between who and who?

12 A. Between myself and the defendant and -- yes, between myself
13 and the defendant.

14 MR. EVERDELL: Your Honor, the government offers
15 Government Exhibit 143.

16 THE COURT: 143 is admitted in evidence.

17 (Government's Exhibit 143 received in evidence)

18 Q. All right. Mr. Spring, if you could please look at the
19 last two pages of that exhibit -- the last three pages of that
20 exhibit. Without reading directly from the exhibit, could you
21 summarize the discussion going on between yourself and the
22 defendant.

23 MR. RUBINSTEIN: Do we have a page that he is on, your
24 Honor?

25 THE COURT: Start at the back and start reading

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1 forward.

2 Q. The last three pages, if you could just summarize a bit
3 what you are discussing there, without having to read through
4 the whole e-mail.

5 A. OK, right. This actually really breaks into two parts.
6 One is still addressing some of the issues we have been talking
7 about here today regarding what was ATP allowable and not, as
8 well as the other area I was working on which were budget for
9 the upcoming fiscal year.

10 Q. If we could now display page 2 of that exhibit, and if you
11 could look at the fourth paragraph there. First of all, who
12 sent that e-mail to who?

13 A. This is from the defendant to myself.

14 THE COURT: This is the next to last page of the
15 exhibit?

16 MR. EVERDELL: Sorry. This is page 2 of the exhibit.
17 And we are at the fourth paragraph from the top.

18 THE COURT: All right.

19 Q. So, this is an e-mail from the defendant to yourself?

20 A. That's correct.

21 Q. Will you please read that paragraph, the fourth paragraph.

22 A. "What cost items did I submit that Joan is disallowing?
23 Any health or fringe cost items? I can overrule/allow those
24 costs even though CASI does not have a formal written benefits
25 plan based on the behavior of the company in the past and

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Spring - direct

1 showing it is consistent through the project. Even if it is
2 not consistent through the project it is still my option do to
3 these things with an unwritten benefits plan."

4 There are some typos in there, I am afraid.

5 Q. Let's talk about the capital improvement equipment expenses
6 you mentioned before.

7 A. Yes.

8 Q. Did you have any discussions with the defendant about these
9 capital improvement equipment expenses that you had mentioned
10 before?

11 A. We are at this point literally two months into the fiscal
12 year two of the project, and it was my estimation that the cash
13 flow was going to be adversely affected because of the amount
14 of money that was being spent on the project. The funds that
15 were being tapped from ATP at that time weren't going to allow
16 the project to continue to function financially, and some of
17 this had to do with capital expenditure or equipment
18 expenditure.

19 Q. Why exactly did this have to do with capital expenditures
20 or equipment expenditures?

21 A. The ATP project I believe for all three of the years that
22 the project would have run for, the recipient could access the
23 funds on a regular basis, and in the case of year two it was on
24 a monthly basis, and when I ran some projections it was obvious
25 to me that we were tapping into too much money too soon, and

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Spring - direct

1 therefore we would run out of money before the end of fiscal
2 year two.

3 Q. Did you have any conversations with the defendant about
4 that issue, about running out of money?

5 A. Well, when it began to affect things like payroll, I
6 certainly did.

7 Q. How did it affect payroll?

8 A. Well, we got -- at one point -- I don't remember the exact
9 date -- it was my estimation that payroll couldn't be met; and
10 as a business owner myself that seemed extraordinary.

11 MR. RUBINSTEIN: Objection, your Honor.

12 Q. All right, without adding those comments, did you have a
13 discussion with the defendant about this issue of cash flow?

14 A. I did.

15 Q. And what if anything did the defendant say to you about
16 this issue of cash flow?

17 A. In regards to payroll?

18 Q. In regards to payroll.

19 A. In regards to payroll he told me that people would get paid
20 when they get paid.

21 Q. I would like you to look at Government Exhibit 142 which is
22 not yet in evidence.

23 Do you see that document?

24 A. I do.

25 Q. Do you recognize that document?

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1 A. I do.

2 Q. And what is it?

3 A. This is an e-mail chain from mid-November of 2002.

4 Q. Between who and who?

5 A. It is between the defendant and myself and -- yes, no one
6 was copied on those e-mails -- just the defendant and myself.

7 MR. EVERDELL: Your Honor, the government offers
8 Exhibit 142.

9 MR. RUBINSTEIN: No objection, your Honor.

10 THE COURT: 142 is admitted into evidence.

11 (Government's Exhibit 142 received in evidence)

12 Q. Please turn to the last page of that exhibit, page 4. Is
13 that an e-mail from yourself to Dr. Karron?

14 A. It is.

15 Q. Could you please look at where you have point five. Could
16 you read out point five?

17 A. "Transferring 40K would mean that in just over six weeks
18 into year two of the project CASI has taken over 30 percent of
19 this year's funding. If you factored in (as if they were paid)
20 the additional \$110,000 plus due CASI vendors, this would mean
21 that CASI has actually used up closer to 50 percent of the
22 NIST-supplied funds. Just something to ponder ..."

23 Q. What did you mean by sending the defendant that e-mail?

24 A. Well, this is mid-November, fiscal year two, one and a half
25 months into the beginning of fiscal year two, and what I am

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1 saying there is that we would have used up 50 percent of the
2 year's funding six weeks into it, six weeks into the project.

3 Q. Does this relate to the cash flow problem you mentioned
4 before?

5 A. Oh, absolutely.

6 Q. What if anything was the defendant's response after this?

7 A. Pretty much it was his company and he would do what he
8 wanted.

9 Q. All right. You mentioned cleaning expenses.

10 MR. RUBINSTEIN: Is he reading from an e-mail or
11 something?

12 THE COURT: No, he wasn't reading from an e-mail. He
13 just gave his answer.

14 Q. Let's talk about cleaning expenses which you mentioned
15 before. You had some discussions with the defendant about
16 cleaning expenses?

17 A. I did.

18 Q. What did you mean by cleaning expenses?

19 A. Well, there were weekly charges.

20 THE COURT: Let me go back. You mentioned 40,000.

21 THE WITNESS: Yeah, 40K.

22 THE COURT: A transfer. What did that refer to? Do
23 you remember?

24 THE WITNESS: The \$40,000, the way one accessed the
25 ATP funds was that it was all done electronically. ATP did not

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1 send CASI a check. We were able to -- Dr. Karron was able to
2 get online and access the ATP funds and shift them to the CASI
3 bank account. And that's what I meant by a transfer.

4 THE COURT: A draw-down.

5 THE WITNESS: Yes, that's correct.

6 Q. If we could talk about cleaning expenses you mentioned
7 before?

8 A. Right. Sorry. There were weekly or bimonthly cleaning
9 expenses written and paid for by ATP.

10 Q. And who were these cleaning expenses going to?

11 A. A lady called Margaret Ferrand.

12 Q. Who is Margaret Ferrand?

13 A. Somebody that I met. She was a person who was associated
14 with the defendant.

15 Q. Did you see Ms. Ferrand in the apartment?

16 A. I did.

17 Q. And what was she doing when you saw her in the apartment?

18 A. I wasn't there all the time, of course, but I did see her
19 cleaning on occasion, but I also saw her sleeping in the
20 apartment and just sort of hanging out.

21 Q. Did you ever see her doing any office work while you were
22 in the apartment and saw her?

23 A. Later, some months after I began, she began to do scanning
24 of receipts, invoices and so on.

25 Q. How long did she do that for as you observed?

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1 A. I believe a few weeks.

2 Q. What happened after a few weeks?

3 A. She just disappeared.

4 THE COURT: How long was she there at the business
5 while you were there?

6 THE WITNESS: Well, your Honor, I remember meeting her
7 relatively soon after I started in July 2002, and I would think
8 by -- I don't remember the exact date, but to mid-summer, early
9 summer 2003. I wouldn't want to swear to that because I don't
10 remember the exact date.

11 Q. And were these cleaning expenses that you mentioned
12 expenses paid out to Ms. Ferrand?

13 A. They were.

14 Q. Did you have any discussions with the defendant about
15 paying Ms. Ferrand for cleaning?

16 A. Yes, as I didn't believe that these were ATP-allowable,
17 given that the apartment that she was cleaning was not an
18 allowable expense.

19 Q. And what was the nature of those discussions?

20 A. Pretty much mind my own business.

21 Q. I would like you to look at Government Exhibit 147 not yet
22 in evidence.

23 A. Could I get a glass of water, please, while we're doing
24 that?

25 Q. Certainly.

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Spring - direct

1 Mr. Spring, do you have that document in front of you,
2 147?

3 A. I do.

4 Q. Do you recognize that document?

5 A. I do.

6 Q. What is it?

7 A. An e-mail chain. The parties involved are the defendant,
8 myself and Mr. Bob Benedict, who was the year two project
9 business manager.

10 Q. And what is the date on that chain roughly?

11 A. June 21, 2003.

12 MR. EVERDELL: Your Honor, the government offers
13 Government Exhibit 147 in evidence.

14 MR. RUBINSTEIN: No objection, your Honor.

15 THE COURT: No objection, 147 is admitted into
16 evidence.

17 (Government's Exhibit 147 received in evidence)

18 Q. If you could take a look at page 2 of that exhibit. Take a
19 look in particular at point 2. Sorry. This is an e-mail from
20 who to who?

21 A. This is an e-mail from myself to the defendant and Bob
22 Benedict.

23 Q. Could we look at your point 2 there for a second.

24 A. Um-hum.

25 Q. Could you explain -- point 2 begins with "Ferrand".

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Spring - direct

1 A. That's Margaret Ferrand, the cleaner and scanner person.

2 Q. What are you saying in this point in your e-mail to the
3 defendant?

4 THE COURT: This is in 2003.

5 THE WITNESS: That's correct, your Honor.

6 A. OK. What we're saying here -- what I'm saying or
7 suggesting to Dr. Karron and Bob Benedict is that in
8 Ms. Ferrand's case on the scanning side of things, her office
9 work, I was certainly of the opinion that part of her time
10 could be spent -- you know, we can justify quite easily as an
11 ATP-allowable expense.

12 Q. And would you justify a full amount of her time as ATP
13 expense?

14 A. No, part time. I say there specifically on a regular
15 biweekly basis part of her time spent on scanning, because what
16 she was doing was scanning masses of material, and I had
17 occasion to witness some of the scanning, and noted at the time
18 that some of it was not related to the project.

19 Q. If you could look at the first page of the exhibit. And is
20 this Dr. Karron's response to you?

21 A. Yes.

22 Q. If you look down at the fifth paragraph.

23 A. Um-hum.

24 Q. And what is Dr. Karron saying to you, if you could read
25 that out?

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Spring - direct

- 1 A. This is the paragraph beginning, "Please, you are not"?
- 2 Q. Yes.
- 3 A. Do you want me to read this aloud?
- 4 Q. Yes.
- 5 A. OK. This is from the defendant to myself -- and Bob
- 6 Benedict, the business manager, was copied -- to me. "Please,
- 7 you are not to make interpretations as to allowability or
- 8 category. You need to be a bookkeeper, not" -- indecipherable
- 9 -- "business owner. I know you like to think like an owner,
- 10 but I own this little dinghy, not you. Because of the
- 11 impression that you are "--
- 12 Q. You have read enough.
- 13 A. Sorry.
- 14 Q. "Mr. Spring, how often were you in the defendant's
- 15 apartment when you were doing your work?
- 16 A. It would vary from week to week. On average two to three
- 17 days a week, between four and six hours a day.
- 18 Q. And when you were in the apartment, how frequently did you
- 19 see the defendant in the apartment?
- 20 A. Often but not always.
- 21 Q. All right. Mr. Spring, what ultimately happened to the
- 22 grant?
- 23 A. At some point -- I don't remember the exact date -- the ATP
- 24 managers closed down the project or at least the funding for
- 25 the project.

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Spring - direct

1 Q. And when did you terminate your employment?

2 A. I stopped working there in October of 2003.

3 MR. EVERDELL: One moment, your Honor.

4 No further questions, your Honor.

5 THE COURT: All right. Mr. Rubinstein?

6 Remind me. Who is Belinda?

7 THE WITNESS: Belinda is the woman from the
8 government, the government auditor. Belinda Riley I believe is
9 her last name.

10 THE COURT: Thank you.

11 CROSS EXAMINATION

12 BY MR. RUBINSTEIN:

13 Q. Good afternoon, Mr. Spring.

14 A. Hello.

15 Q. Now, just to clarify something, you were shown something
16 from Exhibit 147 that's in evidence.

17 THE COURT: Exhibit 147?

18 MR. RUBINSTEIN: Yeah, Exhibit 147.

19 Q. Do you have that in front of you, sir?

20 A. Hopefully I will in a moment. There it is. Yes, I do.

21 Q. Where is the part about the -- where is the part about the
22 dinghy?

23 THE COURT: About what, sir?

24 Q. You said something, a sentence started with --

25 THE COURT: I can't hear you when you get a away from

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Spring - cross

1 the mike.

2 MR. RUBINSTEIN: Sorry, Judge. I'm just trying to
3 locate what was shown on the projector as Exhibit 47, the first
4 page.

5 THE COURT: 147?

6 DEPUTY COURT CLERK: 147?

7 MR. RUBINSTEIN: I just want the witness to tell me,
8 because there was a line put on the screen it started with
9 "because" I think.

10 THE COURT: Do you want the line put back on the
11 screen?

12 MR. RUBINSTEIN: Yes.

13 THE COURT: Then we'll put it back on the screen.
14 Let's move it along.

15 There it is.

16 MR. RUBINSTEIN: No, that wasn't the line, Judge.

17 THE COURT: OK. Is that all right? Do you have it
18 now?

19 MR. RUBINSTEIN: Oh, I see it now. OK. OK.

20 Now, I just missed it in reading it, that's all.

21 Q. You were working for the Ken Jackson group when you started
22 your involvement with Dr. Karron?

23 A. That's correct.

24 Q. And how long did you work for the Ken Jackson group prior
25 to getting involved with Dr. Karron and CASI?

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Spring - cross

1 A. My training by Mr. Jackson started in late 1999, and I
2 began working for CASI as a subcontractor in July of 2002, so
3 we're basically talking a little over two years.

4 Q. And you were the sole -- Ken Jackson is a company?

5 A. He is an LLC, that's correct.

6 Q. And he has -- are you the only employee?

7 A. No. I don't remember then. Currently he has five people
8 on his team. I am not an employee. I am a subcontractor. I
9 am a 1099 person.

10 Q. So, you were a subcontractor of Jackson assigned to work at
11 CASI.

12 A. Correct.

13 Q. And your marching orders were to correct the books,
14 correct? Is that right?

15 A. That was my understanding from the defendant, yes.

16 Q. Well, when Jackson -- when they sent you on this
17 assignment, did Jackson tell you that they were having problems
18 with their books?

19 THE COURT: Objection sustained to the form of the
20 question.

21 Q. Well, is the first time --

22 THE COURT: It calls for a hearsay answer.

23 Q. Was the first time you learned that you were being hired to
24 correct the books when you met with Dr. Karron?

25 A. I don't actually recollect the exact nature of the

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Spring - cross

1 conversation. I was aware once I sat down with Dr. Karron that
2 there were corrections that needed to be made for the books in
3 preparation for the audit by the ATP-appointed person Joan
4 Hayes.

5 Q. It was your understanding that Joan Hayes was appointed by
6 ATP?

7 A. Yes, she was the third-party auditor, that was my
8 understanding.

9 THE COURT: You're correcting your answer?

10 THE WITNESS: Well, she had to come from somewhere,
11 your Honor, and I don't believe she was hired by CASI. So,
12 yes, I am making an assumption that if she was not appointed by
13 CASI, was not appointed by myself or Mr. Jackson, ATP was the
14 only thing.

15 THE COURT: You don't know the answer.

16 THE WITNESS: But I do not know the exact answer, no.

17 Q. Is that because Joan Hayes was an independent auditor?

18 A. I --

19 MR. EVERDELL: Objection.

20 A. -- believe Ms. Hayes is an independent auditor, yes.

21 Q. And were you hired to reconcile the bookkeeping system at
22 CASI?

23 A. That would have been one of the functions that one would
24 have done in preparation for preparing income and expense
25 statements that would be suitable for an audit, yes.

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Spring - cross

1 Q. And you were given the task of getting the books in order
2 for an independent audit required by ATP, correct?

3 A. That was my understanding.

4 Q. The fact that your -- and did you find -- did you ascertain
5 that there was a Quick Books system in place at CASI?

6 A. There was a Quick Books system in place at CASI, yes.

7 Q. And were you familiar with Quick Books when you got this
8 assignment to work at CASI?

9 A. Yes, yes.

10 Q. And is it fair to say that the Quick Books at CASI were a
11 mess?

12 MR. EVERDELL: Objection.

13 THE COURT: Overruled. I will get his judgment.

14 A. Yes. I mean that's kind of relative, but they could have
15 been in better shape.

16 Q. And the books, it was your opinion that the books were not
17 in good condition, right?

18 A. Yes.

19 Q. Do you have any records, any records of how the books were
20 initially kept in this Quick Books system?

21 A. You mean earlier? I'm not quite sure I understand the
22 question.

23 Q. When you started there and you say that there were problems
24 with the books, do you have any -- did you download any disks,
25 or did you --

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Spring - cross

1 A. No.

2 Q. -- or did you make any hard copies to show us that --

3 A. I don't recollect. I was dealing both with Quick Books and
4 the personal side of things and Quicken.

5 Q. Dr. Karron requested that you go through his personal
6 accounts, did he not?

7 A. Yes, he did.

8 Q. And his personal accounts, they were related or unrelated
9 to CASI?

10 A. I would say it was both.

11 THE COURT: Well, let me ask you, personal accounts,
12 were you given more than Quicken, the Quicken account?

13 THE WITNESS: My recollection, your Honor, was that
14 Quicken tracked the defendant's personal expenses.

15 THE COURT: I see. But if he had some other method of
16 keeping track of his expenses separate and apart from that --

17 THE WITNESS: -- I don't remember being aware of that.
18 There may have been, but --

19 THE COURT: When you are talking about personal
20 accounts, you are talking about whatever was on Quicken.

21 THE WITNESS: Correct.

22 THE COURT: All right.

23 Q. And also the CASI books were kept in Quicken, right?

24 MR. EVERDELL: Objection.

25 THE COURT: That's not the testimony so far.

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Spring - cross

1 Q. The CASI books, the records related to the NIST ATP grant,
2 were they also kept in the Quicken system?

3 A. Well, no, they were kept in the Quick Books system, except
4 for those items I was asked to extract, as I testified
5 previously, in the Quicken.

6 Q. So, did you find when you were doing the Quicken part for
7 Dr. Karron's personal that Dr. Karron had made advances to the
8 ATP grant loans, loans to the ATP grant?

9 A. Loans to the ATP grant?

10 Q. Right.

11 A. He may have. I do not recollect that.

12 Q. There were times when Dr. Karron would go into the Quick
13 Books himself, correct?

14 A. I believe so, yes.

15 Q. And the Quick Books are the books you just said that were
16 related to NIST, is that right?

17 A. Sorry. Could you repeat that, please?

18 Q. The Quick Books were the files that were related to NIST,
19 correct?

20 A. Correct.

21 Q. And in fact when Dr. Karron would do that, he would
22 generally mess up the data that was inside the Quick Books,
23 correct?

24 A. It wasn't so much an issue of whether, for example, the
25 amount of the check was written correctly. It was more of a

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1 question as to whether the purpose of the money being spent was
2 assigned correctly.

3 THE COURT: Let me ask you something. You say that
4 Quicken was Dr. Karron personal.

5 THE WITNESS: Personal.

6 THE COURT: And you say that Quick Books was the
7 business.

8 THE WITNESS: Business side.

9 THE COURT: But what about the part of CASI that was
10 not NIST?

11 THE WITNESS: That was also Quick Books.

12 THE COURT: That was also Quick Books.

13 THE WITNESS: In Quick Books, yes.

14 THE COURT: So it was all CASI records were in Quick
15 Books.

16 THE WITNESS: Yes, that's correct. Within Quicken,
17 however, as I testified at the beginning of the other
18 questioning, there were many business expenses also held within
19 Quicken, the personal system, that I was told needed to go into
20 the business system, the Quick Books, so it was a little bit of
21 a succotash, a mix, little bit of this and a little bit of
22 that.

23 THE COURT: So within the quick book system was there
24 any break-down between what was the ATP grant money and what
25 was other money?

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Spring - cross

1 THE WITNESS: Certainly the income that came in was
2 clearly tagged as ATP. On the expenses side it was a mix of
3 some things were correctly tagged as ATP.

4 But if I can just take a moment to explain, it's very
5 simple. These are very simple systems to use, so one has to
6 create a block of accounts that would say, for example,
7 ATP-allowable, and then under ATP-allowable you would have
8 things, equipment purchases, etc., etc. That would be one
9 chunk of data. It might have many entries, but that would be
10 one chunk. And then within that same system, within what we
11 call a file, you would have CASI expenses. That would be
12 non-ATP expenses. And again all of those would have several
13 subgroups. It's not rocket science actually. It's logical and
14 straightforward. And these things can break out very easily.
15 But it's the old saying, garbage in, garbage out.

16 Q. You said they could break up very easily?

17 A. They break out very easily.

18 Q. Well, when you say that there was a mess in these books in
19 the computer, what do you mean by that?

20 A. Both in the Quicken, the personal finance side, because I
21 was asked to go back and reconcile, balance the checkbook if
22 you will, on the Quicken side, only we are balancing a check
23 book inside the computer as opposed to sitting there and
24 writing it down with an actual checkbook. There were things I
25 see actually quite a bit, what we call balance hacks. Maybe we

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1 are all familiar with that. If you can't balance the check
2 book and you get frustrated enough, you just write in a number
3 and go checkbook is balanced and go on doing something else.
4 So there were some instances of that. That wasn't such a great
5 concern to me because --

6 THE COURT: Just -- I think you answered the question.

7 Q. You were given a free run of the computer system, correct?

8 A. I was allowed access to both Quicken and Quick Books, yes.

9 Q. And in fact the Quick Books had in it what's called an
10 audit trail, did it not?

11 A. Well, there are different ways of looking at information
12 you have previously put into the system, yes.

13 Q. Well, there is a specific system, is there not, called an
14 audit trail?

15 A. Yes.

16 Q. So you could determine who inputted what into the system,
17 correct?

18 A. Yes.

19 Q. Did you have a code yourself to go into --

20 A. There was one -- there was one password that myself, the
21 defendant and Nicki Winter used to open up the program. I
22 never used the audit trail myself.

23 Q. And did there come a time in April that you began building
24 a new Quick Books register for CASI?

25 A. I don't remember the exact date, but the time frame sounds

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1 correct, because the auditor would have been -- Joan Hayes
2 would have probably been insisting on such a thing.

3 Q. Well, what does it mean to build a new Quick Books
4 register? What does that mean?

5 A. Quite simple really. One looked at starting, probably even
6 starting prior to the date of the project October 1, 2001, and
7 started out with a clean file so that all the extraneous data
8 from previous years were out of the system, starting on a fresh
9 page.

10 Q. You had to change stuff that was already there?

11 A. Well, I mean there would have been many things that were
12 entered that were correct, so that wasn't changing them; that
13 was just reentering them.

14 Q. But you yourself voided a number of checks, did you not?

15 A. Voided checks?

16 Q. Yes, in the system.

17 A. If a check was written, sent to the payee, presented at the
18 bank and appeared on the bank statement, you would not void a
19 check like that.

20 Q. But did you void other checks?

21 A. I don't have any recollection.

22 Q. During the time --

23 A. I may have, but they would have been checks that were not
24 presented to the bank.

25 Q. During the time you were the bookkeeper, you supervised

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1 this woman Nicki, right?

2 A. Correct, to some extent, yeah. She had some experience,
3 but I was asked to look at what she had done.

4 Q. And it's a fact that you were informed by Dr. Karron that
5 Nicki got things confused and she didn't get the data
6 correctly?

7 A. That I believe was his assessment.

8 Q. Now, during the time you started being the bookkeeper in
9 July or August 2002 -- correct?

10 A. No, that is not correct. In July of 2002 Nicki Winter was
11 on staff.

12 Q. No, I said you.

13 A. She was the bookkeeper.

14 Q. And you were what?

15 A. I was called in to help prepare for the ATP audit, which is
16 to say I wasn't doing the day-to-day invoice inputting, check
17 writing, payroll, etc.

18 Q. Did there come a time that you took over the
19 responsibilities of the bookkeeper?

20 A. At some point I did because Nicki Winter left.

21 Q. And when was that that you took over the responsibility of
22 the bookkeeper?

23 A. I don't recollect the date.

24 Q. Well, during the time that -- for how long a period of time
25 would you say that you were the bookkeeper for CASI?

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1 A. I left the project in October of '03. I don't know, five
2 or six months.

3 Q. And during that period of time --

4 A. Seven months.

5 Q. -- were there any bounced checks?

6 A. Yes. I wasn't the only one writing checks, however.

7 Q. How often were checks bounced during the time that you were
8 the bookkeeper, sir?

9 A. I have absolutely no idea. I was not doing the sole
10 bookkeeping either.

11 THE COURT: Could you write checks?

12 THE WITNESS: I wrote checks, but I did not sign them.
13 I was not a signatory on the account.

14 THE COURT: Well, how were the checks signed?
15 Electronically or personally?

16 THE WITNESS: They were signed personally by the
17 defendant.

18 THE COURT: Could they be signed electronically under
19 that system?

20 THE WITNESS: Yes. I don't recollect that that's the
21 system that we had in place, but there are ways to write
22 electronic checks.

23 THE COURT: These are personal.

24 THE WITNESS: Personally signed. And Dr. Karron wrote
25 many of the checks himself.

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1 Q. And the checks would be generated through the Quicken
2 system.

3 A. Right. You would input your data, you're writing a bill to
4 whoever, you ask the system to pay the bill, and Quicken and
5 Quick Books both make formatted checks, three-part checks, you
6 stick them into your printer, hit print, and out comes the
7 check, and all it needs is signing.

8 Q. And then you would present the checks that were generated
9 to Dr. Karron.

10 A. For his signature.

11 Q. And he would require a backup, an invoice to accompany the
12 check.

13 A. The only way if I was entering --

14 THE COURT: Did he or didn't he?

15 THE WITNESS: Yes, he did.

16 THE COURT: All right.

17 THE WITNESS: From me.

18 Q. And you also were involved in helping with his personal tax
19 returns, his being Dr. Karron's?

20 A. His personal tax returns?

21 Q. Right.

22 A. Myself? Not -- I have no tax experience. I am not an
23 accountant. I think that's highly unlikely. The only thing I
24 might have done was generate reports out of Quicken.

25 Q. Didn't you create at Hayes' request spread sheets out of

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1 the Quick Books in regard to Dr. Karron's income and expenses?

2 A. I don't recollect that. And Dr. Karron's personal expenses
3 were not in Quick Books, they were in Quicken.

4 Q. Well, did you create spread sheets from the Quick Books for
5 Joan Hayes?

6 A. Ms. Hayes would have asked me to be preparing reports out
7 of Quick Books related to the audit, yes.

8 Q. So it was the documents that you created that Joan Hayes
9 relied upon in relation to the audit, correct?

10 THE COURT: Objection sustained. There's more than
11 one conclusion in that question.

12 MR. RUBINSTEIN: Pardon?

13 THE COURT: There is more than one conclusion the
14 witness would have to be responding to in that question. Limit
15 your question to one conclusion so that you're sure that the
16 witness understood that there were two conclusions and not one
17 conclusion.

18 Q. Did you inform -- did Joan Hayes in January of 2003 send
19 you an e-mail related to spread sheets for you to create?

20 A. I would have to see evidence of that e-mail. I have
21 absolutely no idea of an e-mail that may or may not have been
22 sent five years ago.

23 Q. Well, you were pretty good with the e-mails before?

24 MR. EVERDELL: Objection.

25 A. Well --

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1 THE COURT: Objection sustained. Let's go.

2 Q. Let me show you what is marked as Government Exhibit
3 3507-E. This is one of the documents contained therein. It's
4 page 2 of 36 it says on top. Take a look at that starting at
5 the red underlining.

6 A. OK.

7 Q. Does that refresh your recollection that Hayes asked you to
8 create spread sheets?

9 A. Yes, Joan Hayes is referring to spread sheets. I probably
10 would have called them reports, but I think that's just a
11 matter of terminology.

12 THE COURT: What does it read, this e-mail you're
13 referring to?

14 Q. Spreadsheet, there is a hard copy? Is that an actual
15 document?

16 A. It would have been a piece of paper, yes.

17 Q. And, by the way, did you create two --

18 THE COURT: I just want to know where on page 2 you're
19 referring to.

20 MR. RUBINSTEIN: It's -- can you see that, Judge?

21 THE COURT: The top? Which one?

22 MR. RUBINSTEIN: The red underlining, Judge. Only the
23 pink means something, but the red underlining.

24 THE COURT: Spreadsheet sample for sample cost for --

25 MR. RUBINSTEIN: No, that's the wrong page. That's

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1 page 3 of 36. This is page 2.

2 THE COURT: I am on page 2 of 36.

3 MR. RUBINSTEIN: Can I approach, your Honor?

4 THE COURT: I don't know where you are.

5 MR. RUBINSTEIN: Mine says 2 of 36, Judge.

6 THE COURT: Oh, you're up in here.

7 MR. RUBINSTEIN: Yes.

8 Q. By the way, did you create two sample spread sheets related
9 to Dr. Karron's income tax?

10 A. I don't recollect that.

11 Q. Do you recall testifying before that you didn't have
12 anything to do with his personal income tax return? Correct?

13 A. I don't file income tax returns, personal or otherwise, for
14 any of my clients.

15 Q. But the question is whether or not you as part of your
16 responsibilities there was to help prepare information for Dr.
17 Karron's personal income tax return filings.

18 A. It's possible.

19 Q. Well, why don't you take a look at page 3 of the same
20 document, starting one paragraph down. Did you send an e-mail
21 to Joan Hayes?

22 A. Yes, that's an e-mail I would have written, that's correct.

23 Q. And in that e-mail did you provide that --

24 MR. EVERDELL: Objection.

25 THE COURT: Objection sustained.

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1 MR. RUBINSTEIN: Well, I will offer that portion of
2 the e-mail in evidence.

3 THE COURT: Do you want the entire e-mail? I think it
4 would have to be offered if you want to offer it.

5 MR. RUBINSTEIN: OK. I will offer the entire e-mail.

6 MR. EVERDELL: Your Honor, I don't understand the
7 relevance of this, so I object.

8 THE COURT: He is offering it. It's part of his
9 cross-examination.

10 MR. RUBINSTEIN: Q, Defendant's Q for identification
11 we offer into evidence, your Honor.

12 MR. EVERDELL: May I see what you're offering?

13 MR. RUBINSTEIN: Sure.

14 DEPUTY COURT CLERK: Is it one page or the whole
15 thing?

16 MR. RUBINSTEIN: It's one page.

17 THE COURT: Well, it starts on the page before and
18 runs through the page, that third page, and it ends on the
19 fourth page.

20 DEPUTY COURT CLERK: So it's pages 2, 3 and 4?

21 MR. RUBINSTEIN: On the top it says page 3 of 36 is
22 what it says, and so it's --

23 THE COURT: But the subject matter.

24 MR. RUBINSTEIN: Page 4 and then page 3.

25 DEPUTY COURT CLERK: Just two pages, page 3 and page

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1 4.

2 MR. RUBINSTEIN: The top of page 4.

3 THE COURT: I think you need the bottom of page 2 too,
4 because that's the subject matter.

5 MR. RUBINSTEIN: OK. The bottom of page 2, all of
6 page three and the top of page 4.

7 May I proceed, your Honor?

8 MR. EVERDELL: Objection.

9 Q. Did you write the following to Joan Hayes: "so, what I did
10 was create two sample spread sheets for the first tax year in
11 question, 1998 through 1999. The first things that have more
12 detail is I think the one that you will prefer." Did you
13 write that to Joan Hayes?

14 A. This is in reference to Dr. Karron's personal taxes?

15 Q. Right.

16 A. Yes, it sounds like my verbiage, yes.

17 Q. And is it a fact that Dr. Karron had not in this -- and
18 this e-mail was written in 2003, and Dr. Karron had yet to file
19 his 1999 tax returns, correct?

20 A. One would make that presumption. I don't remember. It is
21 probably a question better to be asked of Joan Hayes since she
22 is the person being referenced here, not myself.

23 THE COURT: What about CASI's income tax?

24 THE WITNESS: I don't recollect, your Honor, whether
25 the defendant was filing his taxes or his company taxes. That

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1 wasn't part of my job.

2 THE COURT: But you don't know whether this is CASI
3 income taxes or his income taxes, do you?

4 THE WITNESS: I don't actually. Frankly, given that
5 Joan Hayes is the person that this is primarily addressed to
6 and about, I would think it had to do with CASI's taxes as
7 opposed to his personal taxes.

8 Q. In fact, did you send an e-mail to Joan Hayes saying that
9 you felt that she was wearing two hats by being the auditor and
10 also dealing with Dr. Karron's personal matters?

11 A. Yes. Yes, I do recollect that.

12 Q. So, in fact you questioned whether or not she was an
13 independent auditor, correct?

14 A. Well, anyone who is ever put in the position of wearing two
15 hats, you know, you have to make sure that you can keep one
16 side very separate from the other.

17 Q. So, does that now refresh your recollection as to who
18 retained Joan Hayes' service to be "the independent auditor" on
19 the NIST ATP audit?

20 MR. EVERDELL: Objection.

21 THE COURT: Objection overruled.

22 A. No, it doesn't.

23 Q. When you went into -- besides going into Quicken for Dr.
24 Karron's personal accounts, did you have anything to do with
25 his Mastercard credit card?

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Spring - cross

1 A. In terms of entering data?

2 Q. Yes.

3 A. I don't recollect.

4 Q. How about reviewing the expenditures to see if whether or
5 not there were any ATP NIST-type expenses that were absorbed by
6 Dr. Karron on his Mastercard?

7 A. Well, as I was stating in my previous testimony, there were
8 expenses in the personal Quicken accounts which I was informed
9 of by the defendant before I started the gleaning process,
10 getting this data out of Quicken. Some of those might have
11 been on a credit card. I don't recollect.

12 Q. Were you aware though that Dr. Karron had an American
13 Express card that he utilized for the ATP grant?

14 A. There was I believe within Quick Books an American Express
15 what we call ledger.

16 Q. And did you have any understanding that the American
17 Express card was used strictly for the business of CASI and the
18 ATP grant?

19 A. I would have to see the individual items entered to
20 ascertain whether it was personal, CASI or ATP.

21 Q. And is it fair to say that you changed the Quick Books
22 booking system to include non-NIST categories?

23 A. Well, in a sense the CASI system or everything that wasn't
24 ATP or NIST was CASI, so that data was in there already. The
25 main job was to make very clear what was allowable ATP expenses

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1 and what was a nonallowable ATP expense.

2 Q. Do you recall being interviewed by the agents at the first
3 table here on September 21, 2001 and signing an affidavit?

4 A. In 2001? No.

5 Q. 2004. Sorry. I misspoke.

6 A. It was a beautiful autumn day. I suppose September 21st
7 was the actual day. I don't recollect.

8 (Continued on next page)

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866ZKAR6

Spring - cross

1 BY MR. RUBINSTEIN:

2 Q. Do you recall, without being specific as to September 21st,
3 2004, do you recall meeting with the agents seated at the first
4 table here, Ms. Garrison?

5 A. I recall meeting them, yes, absolutely; Kirk and Rachel,
6 yes.

7 THE COURT: Ms. Garrison you're talking about?

8 THE WITNESS: That's correct, your Honor.

9 THE COURT: All right.

10 Q. And where did you meet them?

11 A. I was working in my home office on West 29th Street, and on
12 that beautiful autumn day and working on one of my client's
13 books and the door bell rang, and they asked to come in to see
14 me. They identified themselves and asked if they could come up
15 and speak with me.

16 Q. And did you tell them that you began working for Dr.
17 Karron, you changed the Quick Books bookkeeping system for the
18 ATP project to include a non-NIST category for CASI spending?

19 A. I'm sorry, could you repeat the question?

20 Q. Yeah. Did you tell them at that interview, when I began
21 working for Dr. Karron, I changed the Quick Books bookkeeping
22 system for the ATP project to include a non-NIST category for
23 CASI spending?

24 A. Well, yes. As I was saying a few minutes ago, if I may
25 repeat myself just briefly.

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Spring - cross

1 Q. The question is did you tell that to --

2 THE COURT: Just did you say that.

3 Q. To the agents?

4 THE COURT: Yes or no.

5 A. I want to be sure it's understood what that means, what I,
6 what that statement means.

7 THE COURT: Wait.

8 A. Okay.

9 THE WITNESS: So maybe you could rephrase the
10 question.

11 THE COURT: The answer calls for a yes or no.

12 Q. Now, it's a job --

13 THE WITNESS: I have to answer no since I don't
14 understand the question.

15 Q. You didn't say that to the agents? It's not your language
16 in an affidavit that you had with the agents?

17 A. If you want to quote directly from the affidavit, I will be
18 happy to say yes or no.

19 Q. All right. Well --

20 THE COURT: Well, then show him what --

21 Q. I'll show you what's been --

22 THE COURT: The proper way is not to quote from
23 something that's not in evidence.

24 MR. RUBINSTEIN: It's 3507A?

25 THE DEPUTY CLERK: 3507A.

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Spring - cross

1 Q. A, as in apple. I point your attention where I have a
2 number nine on the side?

3 A. Uh-huh.

4 Q. See after reading that if it refreshes your recollection as
5 to what you said to the agents?

6 A. Yes, that's correct.

7 Q. So prior to the time that you became a bookkeeper or was
8 involved in the bookkeeping at CASI, their Quick Books system
9 did not have a category called non-NIST items?

10 A. Everything that was not ATP related would, by definition,
11 be non-NIST related, it would be CASI related.

12 THE COURT: That isn't answering the question.

13 THE WITNESS: I'm sorry, your Honor.

14 THE COURT: The question is when you came there,
15 before you got there.

16 THE WITNESS: Right.

17 THE COURT: It's only -- the Quick Books was only used
18 for the ATP NIST.

19 THE WITNESS: No, your Honor, that's not correct. It
20 was used for CASI.

21 THE COURT: And you created -- and only when you got
22 there did you create the non-NIST category for CASI's spending,
23 is that true; that only when you got there, the non-NIST
24 category for CASI spending was created. Follow me?

25 THE WITNESS: I do follow you. No.

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Spring - cross

1 THE COURT: About two big categories, remember?

2 THE WITNESS: Correct. This is either CASI or ATP.

3 THE COURT: All right.

4 THE WITNESS: Simple as that. My recollection is no,
5 that the defendant was already using Quick Books for his CASI
6 business.

7 THE COURT: As distinct from his NIST business.

8 THE WITNESS: Correct, that's correct.

9 THE COURT: All right.

10 THE WITNESS: Simple, yeah.

11 Q. And what was he using for his NIST business?

12 THE COURT: He said that he was using Quick Books for
13 his NIST business, and he was already using it for his non-NIST
14 business, with CASI.

15 THE WITNESS: That's correct.

16 Q. Is it fair to say that there was no non-NIST category in
17 the system before you got there?

18 A. No, that's not correct.

19 Q. So tell us what you meant in your affidavit when you said
20 that, when I began working for Dr. Karron, I changed the Quick
21 Books bookkeeping system for the ATP project to include a
22 non-NIST category for CASI spending?

23 A. Right, this was what we've been talking about for a while
24 now, which is, make sure it's clear in Quick Books that
25 anything that was an ATP/NIST expense was marked as such, and

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1 everything that wasn't, would be non-NIST or CASI related.

2 Q. And you explained that to Dr. Karron?

3 A. Oh, absolutely.

4 Q. Did he ever tell you, don't do that, keep all the expenses
5 together?

6 A. Keep all the expenses together?

7 Q. Did he ever tell you not to do that?

8 A. I don't recollect.

9 Q. In fact, you did segregate NIST expenses from non-NIST
10 expenses, right?

11 A. I did separate the two out, that's correct.

12 Q. And the questions you had with Dr. Karron was a dispute as
13 to whether or not a particular expense should or should not be
14 included in that category?

15 A. That is correct.

16 Q. And you recategorized expenses that you believed were not
17 for the ATP project, correct?

18 A. Based on my understanding the regulations, yes.

19 Q. And then you also put expenses that you believe were for
20 the project, correct?

21 A. Yes, based on my understanding of the regulations, that's
22 correct.

23 Q. And you did this based upon the NIST guidelines as -- since
24 you had read them over?

25 A. That's correct.

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1 Q. Right? Did you also read the CFR that relate to this?

2 A. The CFR?

3 Q. Yes. You know what the CFR is?

4 A. Could you tell me what acronym stands for, please?

5 THE COURT: Code of Federal Regulations.

6 THE WITNESS: If this is the 30-page document that I
7 called the regulations, the answer would be yes.

8 Q. What if it's a 150-page document?

9 A. I don't recollect reading a 150 page document. That I
10 would remember.

11 Q. Do you remember reading a 70 page document?

12 A. I don't recollect.

13 Q. Did you ever have contact with anybody at ATP and ask them
14 any questions as to what you should classify an expense as
15 whether it's to be a NIST expense or a non-NIST expense?

16 A. I did not, I did not -- no.

17 Q. Did Dr. Karron ever ask you to change the information that
18 was the backup for a particular expense?

19 A. I'm sorry, what do you mean by that?

20 Q. Well, any -- in his system, didn't he scan virtually every
21 piece of paper that he came in contact with into the system?

22 A. Yes, he was forced to.

23 Q. And that was in place before you ever got there?

24 A. The scanning?

25 Q. The scanning.

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1 A. Not as mostly related to the ATP project, that is
2 incorrect.

3 Q. Any check that Dr. Karron would sign, you had to present to
4 him an invoice or some backup to show that it was a bona fide
5 expense of the project, correct?

6 A. Any, any check that was written that was based on a bill,
7 of course, you couldn't enter the -- you couldn't create a
8 check unless you knew what the amount was for to the payee
9 should be.

10 Q. Did you discuss which categories, whether some expense was
11 a NIST expense or not a NIST expense, with any employees of
12 CASI?

13 A. Employees, that would be Niki Winter -- who else, Jim Cox,
14 other people?

15 Q. Yes.

16 A. Perhaps, in general conversation. I would not have taken
17 guidance from any of those people. They were not appropriate
18 to the financial dealings of the company or the project.

19 Q. Did you speak to Joan Hayes about what was an appropriate
20 NIST expense?

21 A. Yes, that's already been referenced in some of those
22 previous e-mails I read.

23 Q. And did you, in your affidavit, say that you made your
24 determination as to what was a non-NIST expense based upon
25 discussions with CASI employees and CASI accountant and your

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1 understanding that NIST ATP regulations?

2 A. Yeah.

3 THE WITNESS: Your Honor, may I go back and --

4 Q. Did you say that?

5 THE WITNESS: The question has prompted something, if
6 I may respond.

7 THE COURT: No.

8 Q. No.

9 THE COURT: Just answer the question.

10 A. Yes, there were discussions with the business manager.

11 Q. And who was the business manager?

12 A. For year one it was Lee Gerfein, and for year two, Bob
13 Benedict.

14 Q. And were you familiar with Gurfein's employment contract?

15 A. Very tangentially.

16 Q. Were you familiar with the fringe benefits that Gurfein was
17 entitled to?

18 A. I knew there was an employee benefits plan, he was the
19 business manager, he would probably be participating in it.
20 Other than, there was no formal plan.

21 Q. Were you aware that those kind of expenses, even if you
22 didn't have a formal plan, if they were, if they were in place
23 prior to the start of the grant, that they were allowable?

24 MR. EVERDELL: Objection.

25 THE COURT: Objection sustained.

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1 Q. Well, did you have discussions with Dr. Karron as to the
2 medical expenses and how they should be treated?

3 A. I'm sure I must have at some point, certainly.

4 Q. And did Dr. Karron explain to you that you didn't have to
5 have a written plan in place for it to be allowable?

6 A. He may have said that. It doesn't mean it was true.

7 Q. Doesn't mean it was false, right?

8 A. Correct.

9 Q. Now, you said in year two that by November, 50 percent of
10 the grant money had been expended in year two?

11 THE COURT: I don't think he said that.

12 MR. EVERDELL: Objection.

13 A. That is not what I said, no.

14 Q. Well you discussed in, in e-mail 142, exhibit --

15 THE COURT: Exhibit 142.

16 MR. RUBINSTEIN: Government's exhibit 142.

17 Q. Do you recall testifying that within a month and a half of
18 the second year he was using up 50 percent?

19 A. Yes. If you factored in the monthly receivables, the
20 expenses from year one that he hadn't paid yet, which I believe
21 were in excess of \$110,000.

22 Q. And was money available in the NIST account to pay those
23 expenses?

24 A. Frankly, no, because you were only allowed to drawdown from
25 the ATP or NIST funds a certain amount of funds every month.

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1 You just couldn't go in there and turn on the tap and take as
2 much as you want to.

3 Q. How do you know that?

4 A. How do I know that?

5 Q. Right.

6 A. Dr. Karron personally showed me on the computer the
7 drawdown system which is, as I said, were was all electronic.

8 Q. So he showed you, according to your testimony, that he was
9 limited?

10 A. That's correct.

11 Q. The amount of drawdown he could take at any particular
12 time?

13 A. Per month in year two, that is correct.

14 Q. So if the ATP people said that he could take all the money
15 at one time would that have any affect on your answer?

16 MR. EVERDELL: Objection.

17 THE COURT: Objection sustained, form of the question.

18 Q. Are you aware of Dr. Karron making loans to CASI for the
19 purposes of ATP?

20 A. I do not recollect any such loan, no.

21 Q. Now, Dr. Karron explained to you that he was going to
22 Washington to attempt to convince the people at NIST to permit
23 amendments and revisions to the budget, right?

24 A. Yes, I remember. I read rode that e-mail earlier.

25 Q. And do you know whether or not he actually went to

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1 Washington, D.C.?

2 A. My recollection was he did.

3 Q. And do you know if he submitted any budget revisions,
4 requests for budget revisions?

5 A. I believe one of the points of the trip was to resubmit his
6 figures, yes.

7 Q. And did you have anything to do with creating numbers to
8 submit on financial statement revisions for the CASI NIST
9 budget?

10 A. I don't recollect. There were budget issues that were
11 happening at the same time as the audit by Joan Hayes was
12 happening.

13 Q. Wasn't Dr. Karron asking you for actuals, actual expenses?

14 A. Well, that would be what was actually spent, yes, at the --
15 I mean that would be part of the process.

16 Q. That's what he was asking for were actual --

17 THE COURT: When are, when are we talking about?

18 Mr -- let's have a date, let's have an exhibit we're talking
19 about. You can't have the open ended covering two and a half
20 years. No one can tell the relevance of what they're asking
21 and we're getting to the end here.

22 MR. RUBINSTEIN: Judge, I'm asking to recess at this
23 time.

24 THE COURT: No, you're not.

25 MR. RUBINSTEIN: What? I'm asking -- it's my

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1 anniversary, Judge, and --

2 THE COURT: I'm sorry, I'm sorry. We're getting
3 through this witness, we are getting through this witness.
4 First I've heard of any anniversary party.

5 MR. RUBINSTEIN: Pardon?

6 THE COURT: First I've heard of any anniversary party.

7 MR. RUBINSTEIN: It's a fact. I'm married June 6th,
8 your Honor.

9 THE COURT: I don't dispute it.

10 MR. KWOK: Objection.

11 THE COURT: That's the first I heard of it and we've
12 got a witness on cross-examination longer than he was on direct
13 examination, and we're getting through this witness. But we've
14 got to do it in the next few minutes, not have these extended
15 pauses between questions.

16 These long conversations with your associate, really.

17 MR. RUBINSTEIN: Judge, there is a lot of material
18 here, Judge, you know.

19 THE COURT: It may be, but you have had a lot of time
20 to prepare for it.

21 MR. RUBINSTEIN: I wouldn't say that at all, Judge.

22 THE COURT: You just go right ahead, but you get it
23 done. Put a question.

24 BY MR. RUBINSTEIN:

25 Q. Well, do you recall an exhibit 143, which is dated November

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1 29th, on page --

2 THE WITNESS: Could I get the exhibit back, please, so
3 I can reference it?

4 THE COURT: You don't see exhibits? Do you have a
5 copy of it for the witness? You ought to have the copies. You
6 better get them ready.

7 MR. RUBINSTEIN: 143.

8 A. Yes, it's here in my hand.

9 Q. And that, that's an e-mail that you received from Dr.
10 Karron on November 27th, 2002, right?

11 A. You're referring to, yes, November 27. I'm looking at that
12 part of e-mail chain.

13 Q. And in that e-mail, Dr. Karron advises you that he has to
14 be -- an opportunity to cover any cost or problems by a late
15 budget revision, correct? ATP has given him an opportunity to
16 cover any cost or problems by a late budget revision, right?

17 A. Yes, that's what he's telling me.

18 Q. And he tells you we need actuals that we could cast into
19 the budget revision, correct?

20 A. Yes.

21 Q. And he says, I thought we had actuals from the end of
22 September?

23 A. Yes.

24 Q. And then if you go down, he says, I am also -- you see in
25 the middle of the page, I'm also concerned --

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1 A. I do.

2 Q. -- that a number of costs are not identifiable from my
3 personal Quick Books?

4 A. Yes.

5 Q. Then on the next he says, I am trying to classify all of
6 the costs by ATP or CASI. I can't seem to classify the journal
7 entries you made as bill payments on my bills to CASI.

8 Correct?

9 A. I just want to read that sentence. Yes.

10 Q. He goes on to say, I also can't find the receipts from, for
11 each invoice and I can't match up the amounts on some journal
12 entries to invoices either?

13 A. Yes, that is what it says.

14 Q. And what is your response to him on that?

15 A. In the e-mail?

16 Q. Yeah.

17 A. My e-mail response?

18 Q. Yeah.

19 A. Written the next day, Dr. K, I have my doubts about just
20 how much we can get through on Friday, as the priorities seem
21 to keep shifting, and Joan has her own needs, schedule, agenda,
22 which we must also take into account. I --

23 THE COURT: Go ahead, read on.

24 A. I do believe that most of the data you are seeking for any
25 further budget revisions is actually there in the Q.B.'s, or

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1 Quick Book's or spread sheet files and probably just needs some
2 reformatting. Joan will be arriving at ten on Friday, and I
3 will be at CASI shortly before that.

4 Q. Nowhere in there do you dispute any of Dr. Karron's
5 complaints to you on a prior e-mail, right?

6 A. No.

7 Q. By the way, do you know, did Dr. Karron make sure that all
8 payroll taxes and other taxes were paid?

9 MR. EVERDELL: Objection.

10 Q. Did Dr. Karron --

11 THE COURT: All right.

12 Q. Make sure that all taxes, including payroll taxes, were
13 paid?

14 A. I was not involved in payroll for the most part, so I can't
15 answer that question. Those are tax reporting issues.

16 Q. You know whether or not Dr. Karron deferred receiving his
17 salary when the balances were low?

18 A. I don't know. My only recollection of payroll relates to
19 what I testified to before.

20 Q. Well, were you involved in generating the payroll checks?

21 A. After Niki Winter left, whatever people were being paid on
22 a weekly or biweekly basis. He did not use a payroll service.

23 THE COURT: Did you, did you do it or did he do it;
24 who did it?

25 THE WITNESS: I don't recollect totally, since Dr.

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1 Karron also wrote checks out of Quick Books, but I think I
2 probably would've written some checks which he would've signed.

3 THE COURT: Payroll checks?

4 THE WITNESS: Payroll checks, which he would've
5 signed.

6 THE COURT: All right.

7 Q. Now, you say that you had disagreements with Dr. Karron as
8 to certain expenses that occurred before the grant started
9 October 1st, 2001?

10 A. That's correct. I testified to that, that's true.

11 Q. And he believed, Dr. Karron believed that if he paid it
12 after the grants started --

13 THE COURT: Objection sustained as to the form of the
14 question. Next.

15 Q. Did Dr. Karron tell you that he believed if you paid the
16 expense after the grant started, it was okay to do that?

17 A. I don't recollect him saying that, no.

18 Q. Well, do you recall in your affidavit saying --

19 THE COURT: What are you referring to as his
20 affidavit?

21 MR. RUBINSTEIN: He signed an affidavit on
22 September -- on a beautiful autumn day.

23 THE COURT: I missed the page.

24 MR. EVERDELL: Objection.

25 THE COURT: Has he got a copy of it before him?

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1 MR. RUBINSTEIN: I don't know, Judge.

2 THE COURT: You're asking about his affidavit.

3 MR. RUBINSTEIN: Yes.

4 THE COURT: Show it to him and do it the right way.

5 Come on.

6 MR. RUBINSTEIN: Judge, I would ask that --

7 THE COURT: You've asked the --

8 MR. RUBINSTEIN: He be given his documents, his 3500
9 documents.

10 THE COURT: You've asked the question, you know that.

11 MR. RUBINSTEIN: I know, but he should have --

12 THE COURT: Show him the documents, does this refresh
13 your recollection, et cetera.

14 MR. RUBINSTEIN: I know, but it would make a lot of
15 sense, in all due respect, your Honor, if they had given him
16 his own 3500 material.

17 THE COURT: I don't know whether they did or didn't.
18 I don't think he's supposed to recollect everything in there
19 anyway. That's why the rule is the way the rule is.

20 A. And what was your question, please?

21 Q. My question is whether you stated in your affidavit that
22 Dr. Karron believed that if an expense was paid after the start
23 of the project, then it was a project expense?

24 A. Yes, that's the way I've written clearly. What I stated
25 too.

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1 Q. By the way, did he ever ask you to change a date on some
2 expense so that it would come within the time of the grant?

3 A. I don't recollect that, whether he did or not.

4 THE COURT: I think you asked that question before.

5 MR. RUBINSTEIN: I did not, your Honor.

6 THE COURT: All right.

7 BY MR. RUBINSTEIN:

8 Q. If he asked you to do that, that's something that you would
9 wouldn't forget, would you?

10 MR. EVERDELL: Objection.

11 THE COURT: Objection sustained to the form of the
12 question.

13 Q. If he asked you --

14 THE COURT: Objection sustained. It's obviously
15 hypothetical. Please.

16 Q. Now, Dr. Karron advised you that he was speaking to people
17 at NIST about equipment charges, correct?

18 A. Yes.

19 Q. Do you know -- are you a scientist, by the way?

20 A. Well, actually, my one of my college degrees is in
21 experimental psychology, so if you want to consider psychology
22 a science, the answer is yes.

23 THE COURT: All right, let's.

24 MR. RUBINSTEIN: With that, can't we leave with a
25 smile on our face Judge, for the day?

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1 THE COURT: The big smile will come when you say --

2 Q. So it's fair to say that you had no knowledge of the
3 research project that Dr. Karron was given \$2 million over
4 three years to develop?

5 A. No, I did 'cause he was very proud to explain to me, and I
6 did have an interest.

7 Q. And did you -- were you aware of what each piece of
8 equipment was used for in the project?

9 A. Each piece, no.

10 Q. And you said that the rent was not deductible, allowable by
11 NIST, right?

12 A. That's correct, if the grant recipient resided in a place
13 of where the project happened.

14 Q. So it's your understanding that it was because the grant
15 recipient, Dr. Karron, resided at the location where the
16 computers were, that that was the reason that that rent expense
17 would not be allowed?

18 A. Rather the other way around. The project was housed in the
19 recipient, the defendant's apartment. That's something
20 somewhat different.

21 Q. What's the difference?

22 A. Well, the difference is there was an established home where
23 the grant recipient lived, and you couldn't run -- if you ran
24 your -- there was nothing per se running the project out of
25 your apartment. It's just that you couldn't take your

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1 apartment as an allowable expense. It's very simple. You
2 either could or you couldn't.

3 Q. What if he moved to one floor down? This is a high-rise
4 building, right, on East 33rd Street?

5 MR. EVERDELL: Objection.

6 THE COURT: Hypothetical question again, Mr.
7 Rubinstein, come on.

8 Q. Well --

9 THE COURT: Let's move it on.

10 Q. If you move one flight down to somebody else's apartment --

11 MR. EVERDELL: Objection.

12 Q. -- would you deduct the expense?

13 THE COURT: I think it's the first floor.

14 MR. RUBINSTEIN: Pardon?

15 THE COURT: I think you told us this apartment was on
16 the first floor, so.

17 MR. RUBINSTEIN: No, it's on the 4th floor, Judge. If
18 I said it was on the first floor, I misspoke.

19 THE COURT: Okay.

20 MR. RUBINSTEIN: All right.

21 THE COURT: All right.

22 Q. So it's cetera your view that a rent expense, the only
23 reason the rent expense was not allowable was because the
24 defendant resided at the location, correct?

25 A. Yes, and that was confirmed by Joan Hayes.

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1 Q. Did you ever hear of the concept, direct and indirect
2 expenses related to the grant?

3 A. Yes, I think I have in the past. I haven't thought about
4 it for some years.

5 Q. Well, in the 30 pages that you read --

6 A. I didn't.

7 Q. -- did you happen to notice anything about indirect
8 expenses?

9 A. To my recollection right now, no.

10 Q. By the way, you also said that you had discussed with Dr.
11 Karron the unallowability of utilities, correct?

12 A. Correct.

13 Q. And, in fact, are you aware of negotiations as to having as
14 an expense deductible from NIST for utilities?

15 MR. EVERDELL: Objection, your Honor.

16 THE COURT: I don't see the relevance. I'm going to
17 sustain that.

18 Q. Well, were you a recipient of any e-mails related to rent,
19 utilities expenses?

20 A. There were hundreds of e-mails written in the course of 15
21 months. There may have been one related to utilities. I would
22 have to see it.

23 Q. You were present in the summer of 2002, correct?

24 A. I -- my first billable day was July 27th, 2002.

25 Q. And were you aware that Dr. Karron had taken a \$75,000

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1 payment in October of 2001?

2 A. Yes. This was an initial drawdown. The minute the ATP tap
3 fund tap was turned on, some ten months before I started
4 working on the project.

5 Q. And are you aware that in August that there were
6 bookkeeping entries made to turn that \$75,000 into salary?

7 THE COURT: Objection.

8 MR. EVERDELL: Objection.

9 THE COURT: Sustained.

10 Q. Did you see any records in this, in these Quick Books
11 indicating that 75 -- that Dr. Karron was credited as salary in
12 August 2nd of 2002 for \$61,000 and change?

13 A. I don't remember the exact payments Dr. Karron took as his
14 drawdown or his salary or advances on salary, or money that he
15 paid himself before the project started.

16 Q. But were you aware of a journal entry made in the books on
17 September 30th, 2002, attributing 60 -- \$61,000 to Dr. Karron
18 as salary and that no check was then issued?

19 MR. EVERDELL: Objection.

20 THE COURT: Do you have any recollection of that?

21 THE WITNESS: No, your Honor, I don't.

22 Q. Well, in your --

23 THE COURT: Jury is instructed that you're not to take
24 into account the questions as being evidence. The questions
25 are not evidence. The only evidence comes from the witness.

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1 This witness hasn't testified about those things.

2 Q. Well, before --

3 THE COURT: Let's --

4 THE WITNESS: May I have some more water while
5 we're --

6 THE COURT: Let's bring it to an end, Mr. Rubinstein.

7 MR. RUBINSTEIN: Yes. I'm getting there, Judge.

8 THE COURT: And getting there quickly.

9 Q. Now, when you were doing this financial work for, for the
10 audit, right, you were getting papers for the audit for Joan
11 Hayes?

12 A. Preparing reports, separating out the NIST allowable from
13 the non-NIST allowable, yes.

14 Q. Did you find any, in your preparation, any \$75,000 loan
15 outstanding that Dr. Karron owed?

16 THE COURT: Do you remember?

17 THE WITNESS: Your Honor, what I remember is that when
18 I worked back in time, since we're talking about ten months
19 prior to my starting at ATP, that within the first, literally,
20 the first or second day of the start of the project on October
21 1st, 2001, Dr. Karron took \$75,000 out of the NIST funds as a
22 what bookkeepers or accountants like to call draws. This is in
23 fact, pay yourself a lump sum of money.

24 THE COURT: Wait. You don't have to give an
25 explanation.

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1 THE WITNESS: Okay.

2 Q. In your working with the Quick Books in preparation for the
3 audit, did you find that there was a \$75,000 loan outstanding
4 that Dr. Karron owed on the ATP project?

5 A. The check --

6 THE COURT: Do you remember?

7 THE WITNESS: All I remember is the check that was
8 written out of ATP to the defendant for \$75,000 and, it was
9 marked by the defendant himself, since this was ten months
10 before I started, as D.K., Dan Karron draw. That was how the
11 check was noted.

12 Q. And you have no recollection of whether or not that was
13 ever repaid?

14 THE COURT: He said that was all his memory.

15 Q. Well, you did find --

16 THE COURT: I'll allow the question, let's go ahead.

17 Q. -- as a bookkeeper --

18 THE COURT: Do you remember whether that was repaid in
19 August 2003? That was the question.

20 A. I don't recollect one way or the other, no.

21 Q. Wouldn't it be something that you would, as a --

22 MR. EVERDELL: Objection.

23 Q. -- a bookkeeper something that if it was not repaid, you
24 would have to make some kind of note about?

25 MR. EVERDELL: Objection.

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1 THE COURT: Objection sustained.

2 Q. Did you know a Mark Stanley?

3 A. Mark Stanley?

4 Q. Yeah.

5 A. Oh, no.

6 Q. Did you know Marilyn Goldstein?

7 A. The name sounds familiar, but I don't recollect anything.

8 Q. Hope Snowden?

9 A. Hope?

10 Q. Yes.

11 A. I believe if you're talking about Hope, one of the ATP

12 managers, I knew her by name.

13 Q. B.J. Lide?

14 A. B.J. is another ATP manager.

15 Q. You ever speak to any of those people?

16 A. I said hello to B.J. two weeks ago, and it was just hello,

17 I'm Frank, and she said hi, I'm B.J.

18 Q. Here in the courthouse?

19 A. No, not in the courthouse, no.

20 Q. In the U.S. Attorney's Office?

21 A. That's the building next door?

22 Q. Yes.

23 A. Yes. I said, I said hello to her.

24 Q. And by the way, the, quote, apartment, were you ever in the

25 bedroom of that apartment where CASI was headquartered?

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1 A. Yes, on a couple of occasions. When computers were down,
2 the defendant had a computer in that room.

3 Q. How --

4 A. Once or twice, literally once or twice, probably.

5 Q. You worked there three days a weeks, correct?

6 A. It would, as I've testified already, it would vary between,
7 say, one and three days a week.

8 Q. And how many people were generally there working on the
9 project when you were there?

10 A. Again, that would be -- would change. When Miss Winter was
11 around doing the day-to-day okay keeping for the first couple
12 of months after I joined, Niki was often there. Jim Cox, one
13 of the programmers was often there. And then a gentleman
14 called Mat, who appeared to be a bit of a hanger on, I was
15 never quite sure what Mat did, and Margaret, another hanger on.

16 Q. Margaret did a lot of scanning, right?

17 A. I saw her scanning once or twice.

18 Q. And how much was Margaret paid a week?

19 A. I have absolutely no recollection at this point.

20 Q. Now, there came a time that a Bob Benedict was hired,
21 correct?

22 A. Correct. He is the business manager for fiscal year two.

23 MR. EVERDELL: Objection.

24 THE COURT: Really, Mr. Rubinstein, this is not --
25 this is going way beyond what's necessary for your

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1 cross-examination.

2 Q. Bob Benedict was the business manager for CASI, correct?

3 MR. EVERDELL: Objection.

4 THE COURT: He's already testified to that.

5 Q. And in fact there came a time when the bookkeeping system
6 got moved off-site, right?

7 A. That is correct.

8 Q. And that's after Bob Benedict came aboard?

9 A. That is correct.

10 Q. And was it moved to Ken Jackson Group area?

11 A. Yes.

12 Q. Now, the project was suspended, the grant was suspended,
13 was it not, in the latter part of June of 2003?

14 MR. EVERDELL: Objection.

15 THE COURT: We're all aware of that. He's testified
16 to it before. Now let's go ahead.

17 Q. Did Dr. Karron advance monies to pay bills after the grant
18 was suspended?

19 MR. EVERDELL: Objection.

20 THE COURT: Objection sustained.

21 Q. Are you aware of whether or not Dr. Karron loaned money to
22 the NIST project during the time that you were there?

23 MR. EVERDELL: Objection.

24 A. I am not aware of that.

25 Q. Pardon?

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1 A. I am not aware of that.

2 Q. Well, let me show you an e-mail that's marked 3507Q?

3 THE COURT: What letter?

4 THE DEPUTY CLERK: 3507Q?

5 MR. RUBINSTEIN: Q.

6 THE DEPUTY CLERK: 3507Q.

7 Q. I show you this e-mail dated September 3rd, 2002?

8 A. Uh-huh.

9 Q. From Frank -- from you?

10 A. Correct.

11 Q. To Dr. Karron?

12 A. Right.

13 Q. C.c. Hayes?

14 THE COURT: What page of this?

15 MR. RUBINSTEIN: This is page ten of 51, your Honor.

16 THE COURT: This is September 3rd, 2002?

17 MR. RUBINSTEIN: Correct.

18 Q. And did you, in that e-mail, say that, my biggest concern
19 is making sure that everything is kosher on the flow of monies
20 that has happened since the inception of NIST project between
21 CASI and the NIST sub accounts in CASI and Dr. Karron's
22 personal finances. Dr. K, very understandably, and as most
23 small business owners needs to operate, has made personal loans
24 in various ways to meet his cash flow needs in CASI, NIST, and
25 I want to make sure that we take note of every, everything and

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1 that it is all clean.

2 Do you recall sending that e-mail?

3 A. Well, now, I -- that is my writing, yes. This is about
4 less than five weeks after I started the project, started
5 working on the project.

6 Q. And does that refresh your recollection that Dr. Karron
7 made loans to this project personal loans?

8 A. Subsequent to the writing of that e-mail --

9 Q. Does that refresh your recollection?

10 A. It doesn't, it doesn't -- it doesn't refresh my
11 recollection enough to be specific about whether he actually
12 did make loans or not. I was under the impression, looking at
13 the data that was in Quick Books and Quicken, that he made
14 loans.

15 MR. RUBINSTEIN: No further questions.

16 THE COURT: Any redirect?

17 MR. EVERDELL: No redirect, your Honor.

18 THE COURT: No redirect? Thank you. I'm sorry, jury,
19 but it saved us one witness.

20 MR. RUBINSTEIN: One last question my associate asked
21 me to ask.

22 THE COURT: Oh, no.

23 MR. RUBINSTEIN: One question.

24 THE COURT: Jury's excused.

25 (Jury exits the courtroom)

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1 THE COURT: Have a good weekend. I hope the weather
2 is good, not too hot. See you at 9:30 in the morning, Monday
3 morning, not Saturday morning.

4 Okay, you're excused.

5 THE WITNESS: Thank you.

6 THE COURT: Who is the next witness.

7 MR. KWOK: The next witness is Bob Benedict.

8 MR. EVERDELL: Bob Benedict, your Honor, that is the
9 last government witness.

10 THE COURT: All right.

11 MR. EVERDELL: We believe.

12 THE COURT: Okay.

13 MR. RUBINSTEIN: I'll have witnesses here Monday and
14 be prepared to go, your Honor.

15 THE COURT: All right.

16 MR. RUBINSTEIN: After I review the Government's
17 submission under Rule 29.

18 MR. KWOK: When can we expect the witness list from
19 defense counsel?

20 THE COURT: You're going to have a submission -- what
21 about Rule 29?

22 MR. RUBINSTEIN: Yeah, your Honor had asked the
23 government to submit --

24 THE COURT: Yes, I have, on Monday morning.

25 MR. RUBINSTEIN: -- a submission.

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1 THE COURT: Yeah. But you'll have a witness to go.

2 MR. RUBINSTEIN: No, they have --

3 THE COURT: We have a -- Rule 29 won't come up until
4 after their last witness.

5 MR. KWOK: When can we get a witness list from defense
6 counsel?

7 THE COURT: Oh, yes, your witness --

8 MR. RUBINSTEIN: I'll provide it as soon as --

9 THE COURT: Mr. Rubinstein.

10 MR. RUBINSTEIN: You have the names of three of the
11 witnesses, and we had a witness list that was submitted for the
12 jurors. A number of them are character witnesses.

13 THE COURT: Oh, no. You have a list of people whose
14 names might be mentioned during the course of the testimony.

15 MR. EVERDELL: What three are you referring to now?

16 THE COURT: That's different than the witness list.

17 MR. RUBINSTEIN: I don't know. I have to get -- we'll
18 e-mail you something, we'll e-mail you something tomorrow.

19 MR. EVERDELL: Your Honor, he still hasn't given
20 resumes for the experts that he noticed as well.

21 THE COURT: We need those resumes for the experts. We
22 asked for those. My law clerk asked for those a week ago, I
23 believe.

24 MR. RUBINSTEIN: We'll, e-mail them to the government.
25 He had given them to me three times and I misplaced them.

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1 MR. EVERDELL: If your Honor if he plans to call an
2 expert on Monday, I --

3 THE COURT: What?

4 MR. EVERDELL: We still don't have the resumes. I
5 mean there is no way we can -- we still stand on our objection
6 to these experts. We haven't had proper notice and --

7 THE COURT: I want to know the name of the witnesses
8 for Monday and Tuesday right now.

9 MR. RUBINSTEIN: I have Mason, we'll have --

10 THE COURT: Who?

11 MR. RUBINSTEIN: John Mason.

12 MR. EVERDELL: Who is John Mason?

13 THE COURT: Who is John mason?

14 MR. RUBINSTEIN: Am I required to give them --

15 THE COURT: Well, is it --

16 MR. RUBINSTEIN: -- information?

17 THE COURT: He's not one of the experts.

18 MR. RUBINSTEIN: No, he's not an expert.

19 THE COURT: All right.

20 MR. RUBINSTEIN: Bill, William Nicoli, who is a real
21 estate --

22 MR. EVERDELL: He's one of the experts.

23 MR. RUBINSTEIN: He's one of the experts.

24 MR. EVERDELL: We don't have his resume.

25 THE COURT: You have to have the resume or I'm not

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1 going to allow him.

2 MR. RUBINSTEIN: I will get it to --

3 THE COURT: The government's going to have to get it
4 within the next half-hour to one hour.

5 MR. RUBINSTEIN: It's on all --

6 THE COURT: I'm sorry, we're not going to allow you to
7 do this. You've had --

8 MR. RUBINSTEIN: We'll give it to you now.

9 THE COURT: My law clerk called you on Friday a week
10 ago for those to be submitted to us and to the government.

11 MR. RUBINSTEIN: I know, and they dumped all this 3500
12 material on me, Judge, and I've been working seven days a week
13 and I'm doing the best I can, I'm sorry. And if you want to
14 preclude me -- we'll give you Nicoli's resume --

15 THE COURT: You've got assistants.

16 MR. RUBINSTEIN: -- now.

17 THE COURT: All right. You've got it on computer
18 evidently.

19 MR. RUBINSTEIN: It's not --

20 THE COURT: Doctor has his computer here, Dr. Karron.
21 Punch it out for all of them.

22 MR. EVERDELL: Your Honor, separate and part from the
23 resume issues, we still have a relevance objection to a lot of
24 these experts. It's just not relevant to the --

25 THE COURT: I know, but I think we should have a

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1 resume. And, in any event, you don't know how I'm going to
2 hold.

3 MR. EVERDELL: That's true, your Honor.

4 MR. KWOK: If I may, while the defense is working on
5 the resume, I believe they also raised the issue of quashing
6 the subpoena we issued if as when, the subpoena we issued to
7 the defendant in case he testifies. We still haven't got any
8 submission from them on the grounds that they would like to
9 quash a subpoena. I believe your Honor requested further
10 briefing from defense counsel because the case they cited to
11 your Honor was not on point, the case by Judge Jones.

12 THE COURT: I've forgotten which --

13 MR. KWOK: I believe they cited the Weissman case,
14 your Honor, and your Honor read the case on the bench and was
15 of the view that because that concerned a third party subpoena
16 it was not on point, and requested further briefing from
17 defense counsel. We haven't gotten anything at this point.

18 THE COURT: I've forgotten what happened. I remember
19 the Judge Jones case did that, but I've forgotten the issue it
20 was raised.

21 MR. KWOK: The issue, I believe that they raised, was
22 that 17C trial subpoena could not be issued for impeachment
23 purposes, but the holding of that case is much different
24 because there it was issued to a third party not testifying.

25 THE COURT: Yes. And nothing further having been

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1 submitted by the defense --

2 MR. RUBINSTEIN: We're getting --

3 THE COURT: And since nothing further has been
4 submitted by the defense, it's seems to me that the subpoena
5 has to be complied with.

6 MR. RUBINSTEIN: Well, when we make a decision if
7 we're going to call him, I don't think we have to comply with
8 it before we make that final decision.

9 MR. KWOK: The subpoena asks for two days in advance
10 of testimony.

11 THE COURT: If you're going to call him, you have to
12 submit the material in advance so they can be prepared for the
13 cross-examination, if you're going to call him. If you're not
14 going to call him, that's another matter, or if he doesn't want
15 to be called, it's up to the two of you. It's actually his
16 decision. So what's it going to be?

17 MR. RUBINSTEIN: We have the exhibits here, somewhere,
18 Judge. It might be in the back, Judge.

19 (Recess)

20 MR. RUBINSTEIN: I turned over documents for you,
21 Judge.

22 MR. KWOK: It's not all of the materials requested,
23 however.

24 THE COURT: What's missing?

25 MR. KWOK: On the trial subpoena --

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1 THE COURT: What?

2 MR. KWOK: Yeah, in the subpoena we requested the
3 federal and state tax returns and/or tax filings relating to
4 the tax year 2001 through 2003, and second item is any and all
5 documents showing sources of income for the years 2001 through
6 2003, including but not limited to W-2 forms, interest income
7 statements and investment income statements; third item is bank
8 account statements pertaining to personal bank accounts at
9 banks other than Chase Bank for the years 2001 through 2003;
10 fourth item is proof of payment and any, any and all documents
11 showing sources of payment for rent and/or mortgage, medical
12 expenses, home renovation expenses, home cleaning expenses, and
13 any and all bills and/or invoices exceeding \$2,000, for the
14 years 2001 through 2000.

15 THE COURT: What about maintenance, maintenance,
16 maintenance bills?

17 MR. KWOK: Home cleaning expenses, renovation
18 expenses.

19 THE COURT: I don't mean that kind of maintenance.

20 MR. RUBINSTEIN: Your Honor, they have everything from
21 Spitz. Spitz turned over all financial disclosure. He has no
22 other accounts other than Chase. They have all his records,
23 and.

24 THE COURT: What about his rent and maintenance bills?

25 MR. RUBINSTEIN: Rent and maintenance bills.

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1 THE COURT: Were those turned over?

2 MR. RUBINSTEIN: They have every, every check he

3 ever --

4 THE COURT: Those aren't your personal --

5 MR. RUBINSTEIN: They have all of that, that's what

6 they have in their box.

7 THE COURT: Do you --

8 MR. KWOK: If that's what they represent that we have

9 all the checks, we are fine with that. I just want them to not

10 say that there are some other checks he wrote rent checks from

11 that are not available to the government that shows that he

12 used some other funds to pay for his rent. But if they want to

13 represent that our records are representative of the entirety

14 of the situation, we are satisfied with that.

15 THE COURT: Is that the case then?

16 MR. RUBINSTEIN: I understand that Dr. Karron gave

17 everything to Joan Hayes and Joan Hayes has cooperated with the

18 government throughout, and they have all of his documents. If

19 they can point to a document that they are missing, we will

20 attempt to find, find it in our system, and maybe duplicate it,

21 but they have everything, they seized everything. What they

22 didn't seize, Hayes gave them.

23 THE COURT: Wait a minute. The question is they've

24 asked for the personal bank records, which I gathered both

25 sides agreed they have because there are no other bank records

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1 than the bank record for the account at Chase Manhattan, is
2 that where it is?

3 MR. RUBINSTEIN: That's correct, your Honor.

4 MR. KWOK: I believe they referred during the course
5 of this trial to Master Card of which we are unaware, so if
6 there are Master Card records --

7 MR. RUBINSTEIN: I'll gladly give you the Master Card
8 records. Do we have them here? Where are they? Gladly give
9 them. Maybe they'll dismiss the indictment after they see the
10 Master Card records.

11 I'll give, I'll give them all of these and they could
12 drop them -- I'll pick them back up on Sunday at their office.

13 MR. KWOK: And the last two items are first, proof of
14 residency, temporary and/or permanent from 2001 through 2003
15 including but not limited to personal identification documents;
16 for example, driver's license, tax documents, mailing address
17 labels, magazines, subscriptions bills and/or labels telephone
18 bills and utility bills. And the last item is diaries,
19 calendar planners or appointment books relating years 2001
20 through 2003.

21 MR. RUBINSTEIN: You know what, Judge, they seized
22 everything the man had, all his computers as you well know from
23 your trial. Everything was scanned in, they have a disk that
24 they paid \$30,000 for. They have all the records, period. And
25 I think this is outrageous okay.

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1 THE COURT: I don't know whether --

2 MR. RUBINSTEIN: Waste of time.

3 THE COURT: Or not -- all I'm doing is I know what the
4 subpoena called for and if they had them, it seemed to me it
5 should be in some kind of motion to quash with the statements
6 that you've made.

7 MR. RUBINSTEIN: I made motion to quash before, but
8 they have --

9 THE COURT: No, contains the statements.

10 MR. RUBINSTEIN: -- all the documents from all the
11 computers. They know he doesn't have any paper because they
12 know that he scanned everything, and all the testimony and all
13 their witnesses have said that he scans it and destroys the
14 original.

15 MR. KWOK: Well --

16 MR. RUBINSTEIN: So I don't know what their problem
17 is, Judge, but I don't think it should be your problem, it
18 shouldn't be my problem.

19 MR. KWOK: The problem, your Honor, is that when we
20 agreed to essentially pay for the defense discovery cost, we
21 made it very clear that we do not intend to go through any of
22 those documents. And subsequent to that, we agreed to let
23 defendant copy all the data on those computers. And so it is
24 in their possession now, which they can review. The government
25 has never agreed to review any of the documents in those

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1 computers, because we can't simply review 60 percent of the
2 total holdings of the Library of Congress without knowing where
3 the stuff is. So if they decide to call the defendant on the
4 stand, we expect these documents to be produced. If they're
5 not, I expect that the government will be allowed to
6 cross-examine the defendant, including why these records are
7 not forthcoming.

8 MR. RUBINSTEIN: What records are they claiming, what
9 are they claiming is missing?

10 MR. KWOK: For example, if the defendant were --

11 THE COURT: They're just asking for those things that
12 are in the subpoena to be retrieved.

13 MR. RUBINSTEIN: Well --

14 THE COURT: From your computer system or whatever
15 from.

16 MR. RUBINSTEIN: Give us a list, we'll do what we can.

17 THE COURT: The list is in the subpoena. All they're
18 asking for is the subpoena?

19 MR. RUBINSTEIN: I don't have the subpoena. It's in
20 the box somewhere.

21 MR. KWOK: I'll give it to you right now.

22 (Hanging)

23 THE COURT: All right, the record will reflect the
24 subpoenas' been handed over.

25 MR. RUBINSTEIN: We have no diaries, calendars.

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1 THE COURT: There may be some place on that computer
2 that's got --

3 MR. RUBINSTEIN: They didn't ask for that, Judge. All
4 I have to do is what's on the subpoena. There's no diaries,
5 calendar, planners, appointment books, related for that period.

6 Proof of residency? I don't understand that at all,
7 Judge, how do you prove your residency? They want his driver's
8 license. They know he lives there. I mean they seized the
9 documents, everything from him in 2006.

10 THE COURT: It says both temporary and permanent.

11 MR. KWOK: Permanent --

12 MR. RUBINSTEIN: I move to quash that as ridiculous.

13 THE COURT: Well, there's --

14 MR. RUBINSTEIN: Is there any dispute that he lives --

15 (Continued on next page)

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1 THE COURT: Excuse me. I looked through the records,
2 some during the course of the trial, and there is some
3 indication that the defendant may have lived in Connecticut for
4 a while during this period.

5 MR. RUBINSTEIN: And what is the relevancy of that?

6 THE COURT: What?

7 MR. RUBINSTEIN: What the relevancy of it?

8 THE COURT: It is charged to the --

9 MR. RUBINSTEIN: No expenses from Connecticut were
10 charged.

11 THE COURT: They were charged -- they were contained
12 in the records. Whether they were charged or not, I don't
13 know.

14 MR. RUBINSTEIN: Nothing was contained in the records
15 about Connecticut. They said that --

16 THE COURT: There is something about Connecticut in
17 those records. There is at least three months of rent or
18 something of that sort.

19 MR. KWOK: That's correct, your Honor. I think the
20 argument will be that defendant actually told the NIST people
21 that he lived in Connecticut as a basis for claiming rent in
22 his New York apartment, to show that he doesn't live there, and
23 so it's actually office expense. So, to rebut that argument,
24 if he does in fact live in Connecticut, we want that document.

25 MR. RUBINSTEIN: I'm not going to argue that he lived

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1 in Connecticut and therefore rent, which is an indirect cost,
2 is deductible. It's irrelevant where he lived.

3 THE COURT: Mr. Kwok is anticipating a different
4 argument from the defendant, that in fact his main residence
5 was in Connecticut and this was just a temporary residence.

6 MR. RUBINSTEIN: What relevance is that? We're not
7 going to argue.

8 THE COURT: And therefore he should be entitled to
9 rent.

10 MR. RUBINSTEIN: We're not going to raise that
11 argument. We don't intend to use that argument, because rent
12 is classically an indirect cost of the grant. It's irrelevant
13 where he lived, and it wouldn't matter if he lived in Timbuktu.

14 THE COURT: No one knows what people will argue.

15 MR. RUBINSTEIN: Judge, I am telling you now, I'm
16 making a representation as an officer of the court that I have
17 no intention on raising an argument that he lived anyplace
18 other than where he is currently living.

19 The court reporter is here, Judge.

20 THE COURT: All right. Is that satisfactory, Mr.
21 Kwok?

22 MR. KWOK: It is not. I direct the court's attention
23 to Exhibit 70, page 18. That's the defendant's rebuttal to the
24 audit report.

25 MR. RUBINSTEIN: I am not raising it. It's not mine.

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1 It's not mine. It was made by Spitz.

2 MR. KWOK: This document was submitted by the
3 defendant.

4 MR. RUBINSTEIN: No, it was put in evidence by the
5 government.

6 MR. KWOK: On the cover page it says prepared by Dr.
7 D.B. Karron with the assistance from others.

8 THE COURT: That's my recollection, but I don't have
9 it in front of me.

10 MR. RUBINSTEIN: Your Honor, I have the résumés of
11 three character witnesses that I am submitting -- I mean three
12 expert witnesses that I am submitting to the court.

13 THE COURT: It's more important that the government
14 get it. This isn't defendant's property.

15 MR. RUBINSTEIN: Pardon?

16 THE COURT: It's a different address, I gather, on the
17 front page.

18 MR. RUBINSTEIN: What, Judge?

19 THE COURT: I think you've got to have something
20 better than that.

21 MR. RUBINSTEIN: Why? It says what he did. It gives
22 you --

23 MR. KWOK: We don't have a summary of his testimony.

24 THE COURT: What?

25 MR. RUBINSTEIN: The summary is that he sold the

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1 apartment for \$510,000 and he is a real estate broker.

2 THE COURT: What relevance is that?

3 MR. RUBINSTEIN: The relevance is that the apartment
4 was worth \$700,000 before all of these changes.

5 MR. KWOK: And what is the relevance of that, your
6 Honor?

7 MR. RUBINSTEIN: That the government claims that he
8 made structural improvements.

9 THE COURT: Oh, come on.

10 MR. EVERDELL: It's whether or not they were in the
11 budget. It has nothing to do with what he sold his house for
12 later.

13 THE COURT: Have you got his proposed testimony in sum
14 and substance? Have they got that?

15 MR. RUBINSTEIN: Yeah.

16 THE COURT: And have they got a résumé of his
17 employment where he has been?

18 MR. RUBINSTEIN: He says he spent the last 20 years
19 working in sales and marketing, executive position with major
20 corporations before joining Halstead Properties.

21 THE COURT: That is not a résumé for purposes of an
22 expert witness.

23 MR. RUBINSTEIN: Judge, 20 years he is at the same
24 place, real estate.

25 THE COURT: That's not a résumé. You won't be able to

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1 get the testimony in. You've got to say where he was employed,
2 etc.

3 MR. RUBINSTEIN: It says here the last 20 years he
4 worked for one employer in real estate. What more does he have
5 to say?

6 THE COURT: It doesn't say that.

7 MR. RUBINSTEIN: It sure does.

8 THE COURT: It says -- before joining in '88, all
9 right.

10 MR. RUBINSTEIN: Passed the real estate board, brokers
11 board. He says where he worked before. It gives his
12 background, his organizations, his education.

13 THE COURT: It doesn't give his expertise.

14 MR. RUBINSTEIN: It says he is a licensed broker for
15 over 20 years.

16 THE COURT: Brokers are not appraisers.

17 MR. RUBINSTEIN: Pardon?

18 THE COURT: Brokers are not appraisers, if that's what
19 you're putting it in for. So you need to know what his
20 testimony is going to be.

21 MR. RUBINSTEIN: I'm telling you what his testimony
22 is, Judge. He listed the property. Not only that he also
23 lives in the building. He knows that other apartments similar,
24 what they were sold for in the building, \$700,000, and that
25 this apartment sold for \$510,000 because of the condition it

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1 was in.

2 MR. KWOK: Your Honor, I frankly don't see the
3 relevance of that. The question is how the defendant spent the
4 grant money, not how the market values whatever renovation he
5 decided to make to suit his needs.

6 MR. RUBINSTEIN: He didn't make it to suit his needs.
7 He made it to suit -- that's exactly the point. He made it to
8 suit the needs of ATP, not his needs. And we should be able to
9 prove that.

10 THE COURT: What about this prior grant that he had?

11 MR. RUBINSTEIN: The DABRA contract ended in 1999.

12 THE COURT: What was it?

13 MR. RUBINSTEIN: It was a contract he had to develop
14 things for, advanced research project.

15 THE COURT: And what equipment was used for that?

16 MR. RUBINSTEIN: The equipment that he bought. And
17 that's the equipment that he wanted cofunding costs from. But
18 the experts have no testimony on that. That's not what we're
19 talking about.

20 THE COURT: I was just wondering about it because it
21 seemed to me on the validity of the argument that rent was
22 not -- or should or should not be an appropriate charge.

23 MR. EVERDELL: I don't think his testimony has
24 anything to do with that. It doesn't sound like his testimony
25 has anything to do with that issue.

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1 THE COURT: No, I'm talking about DABRA.

2 MR. RUBINSTEIN: CASI paid Dr. Karron rent for CASI.
3 They made money. They had a contract with DABRA which happened
4 to be a federal contract, and the corporation paid him rent
5 that he reported on his tax returns, and that's the way he ran
6 his business.

7 Can I get home to my wife, please?

8 THE COURT: What else do we have? You need the name
9 of the witnesses.

10 MR. RUBINSTEIN: I gave it to them. I gave them all
11 of the experts.

12 THE COURT: You just told us the name of the expert.

13 MR. RUBINSTEIN: I also gave them Mason.

14 THE COURT: Mason will be called. I don't know how
15 long he will take, but I can't see it being very long. Who
16 else do we have?

17 MR. RUBINSTEIN: We have some character witnesses,
18 Judge. I will give you the names in a second.

19 THE COURT: But give them the names of the witnesses
20 who will be called on Monday and Tuesday.

21 MR. RUBINSTEIN: I am going to try to get them all
22 here on Monday and wait until Tuesday if I need them on
23 Tuesday. The character witnesses are Ted Coons, Theodore
24 Coons. Professor at NYU. Doctor Michael Treat is an MD.
25 Possibly Jim Cox, your Honor.

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1 THE COURT: That will be a fact witness? As a fact
2 witness?

3 MR. RUBINSTEIN: Jim Cox? Yeah, he worked at CASI.

4 THE COURT: I just want to make sure I understood.

5 MR. RUBINSTEIN: I don't see us going beyond Wednesday
6 morning. I don't even know if we will finish the day on
7 Tuesday, except of course if the defendant testifies, and I
8 would assume we would probably anticipate finishing up sometime
9 on Wednesday, which is less than was anticipated. And also Mel
10 Spitz, your Honor, the accountant. I haven't made a decision.
11 I'm leaning towards not calling him.

12 THE COURT: Who?

13 MR. RUBINSTEIN: Mel Spitz, the accountant, the CPA.
14 The government is well aware of him. He is the one they dealt
15 with during the audit.

16 THE COURT: OK. Does that help?

17 MR. KWOK: It's all the information we have at this
18 point. We still stand on our objections on the expert
19 witnesses on grounds --

20 THE COURT: I don't think they're calling them.

21 MR. RUBINSTEIN: Yes, I submitted their résumé to you,
22 your Honor. They're with the exhibit.

23 THE COURT: Oh, you are going to call them. But they
24 will be very short witnesses?

25 MR. RUBINSTEIN: Sapin and LeClaire, yes.

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1 MR. KWOK: And we still object on relevance grounds,
2 on lateness of the notice, and the inadequacy of the notice.

3 THE COURT: All right. Well, I don't know whether
4 I've got all the submission on the relevance grounds, but...

5 MR. KWOK: We submitted a letter to the court when we
6 first heard about these witnesses.

7 THE COURT: You're standing on that letter.

8 MR. KWOK: That's correct, your Honor.

9 THE COURT: OK.

10 (Trial adjourned to June 9, 2008 at 9:15 a.m.)

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1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

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4 v. S2 07 CR 541 (RPP)

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5 DANIEL B. KARRON,

5

6 Defendant.

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8 June 9, 2008

9 9:40 a.m.

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10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

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12 District Judge

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13

14 APPEARANCES

14

15

United States Attorney for the

16

Southern District of New York

16

BY: STEVEN KWOK

17

CHRISTIAN EVERDELL

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Assistant United States Attorneys

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RUBINSTEIN & COROZZO, LLP

19

Attorneys for Defendant

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BY: RONALD RUBINSTEIN

20

20

Also Present: Rachel Ondrik, U.S. Dept. of Commerce

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Kirk Yamatani, U.S. Dept. of Commerce

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1 (In open court; jury not present)

2 THE COURT: Well, I've gotten the Government's letter
3 of June 9th, and it appears to agree with the Court, that the
4 government must prove misapplication of the grant funds and not
5 just misapplication of CASI money.

6 MR. EVERDELL: Your Honor, I think in this case the
7 issue is somewhat mooted, because the only funds that CASI had
8 were ATP funds. I don't --

9 THE COURT: That's --

10 MR. EVERDELL: I think the --

11 THE COURT: That's, I think, for the small amount that
12 was for refunds.

13 MR. EVERDELL: Right. There are a couple of things
14 that factor into this, right. There are the refund checks in
15 the first year, which really don't count so much, and then in
16 the second year there were, I think Ms. Riley testified about
17 \$1500 worth of some other funds that came in, but everything
18 else is ATP. And as the letter makes clear, Ms. Riley did take
19 into account the \$37,000, quote unquote, emergency loans that
20 the defendant gave to the company, because he pulled out much
21 more than that, that offset. So really we're dealing with ATP
22 funds alone.

23 I think the law is clear that you don't actually need
24 to trace the funds to the actual purchases, so that if they
25 were commingled with actual separate CASI funds, we could still

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1 prove that he spent -- improperly spent CASI money. However,
2 in this case, because all the funds are ATP funds, it doesn't
3 really raise an issue.

4 THE COURT: Well, the way I read the statute and go
5 back to the statute, it is a little inconsistent from the
6 Government's request to charge. As I read the statute, the
7 "without authority" phrase, I guess I should say, applies to
8 the misapplication of funds, as well as the conversion of
9 funds. That's not reflected in the request to charge.

10 MR. EVERDELL: I see, your Honor.

11 THE COURT: And I think it should be. There's no
12 comma. Do you follow me?

13 MR. EVERDELL: Yes, I see where you're looking, your
14 Honor. I didn't see any particular case law addressing that
15 issue.

16 THE COURT: Well, after reading your, what is it,
17 Tenth Circuit case --

18 MR. EVERDELL: Frazier.

19 THE COURT: -- and reflecting on it, it seemed to me
20 that's the way the statute should be read, and I intend to make
21 the request to charge reflect that.

22 MR. EVERDELL: So if I could just be clear, do you
23 have an idea of how the charge would read at this point?

24 THE COURT: Well, it incorporates the without
25 authority. I think I drafted something over the weekend. I

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1 put it into the third element so that the third element begins
2 that, the government must prove, beyond a reasonable doubt,
3 that the defendant without authority intentionally misapplied
4 money or property. In this case, to intentionally misapply
5 money or property means to intentionally apply money or
6 property, subject to the terms and conditions of the grant in
7 an unauthorized manner.

8 MR. EVERDELL: I mean I in -- we will consider any
9 possible objections, but I think at the moment that I don't
10 think we would have any objection to that, but we'll consider
11 it and if there's anything we want to raise --

12 THE COURT: That's what I -- that's the way I -- then
13 it goes on.

14 MR. EVERDELL: Okay.

15 THE COURT: And then it goes onto incorporate the
16 defendant's request that the misapplication of money or
17 property, however, does not apply to bona fide as a salary
18 wages fringe benefits and other compensation paid and expenses
19 paid or reimbursed in the usual course of business. Because
20 that's right in the statute.

21 MR. EVERDELL: Right, that's in the 660.

22 THE COURT: Now, I don't know whether -- I haven't
23 heard anything from Mr. Rubinstein.

24 MR. RUBINSTEIN: Judge, I don't know how the
25 government could --

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1 THE COURT: I'm sorry, sir?

2 MR. RUBINSTEIN: I don't know how the government could
3 legitimately argue that there were no contributions by Dr.
4 Karron.

5 THE COURT: There is no what?

6 MR. RUBINSTEIN: There were no contributions by Dr.
7 Karron. Their entire case was predicated upon two concepts, as
8 far as I can understand, to for criminality. Unless your
9 Honor's only talking about the request to charge issue.

10 THE COURT: I'm really just talking about the, trying
11 to be sure that whatever case goes to the jury is framed as I
12 understand the statute. And as I understand the statute, that
13 with authority applies both to conversion of funds and
14 misapplication of funds and, therefore, it seems to me the
15 issue of authority to use the funds.

16 Now, you say you maintain that the funds were not all
17 the government funds and that Dr. Karron made contributions in
18 the forms of loans to the corporation, as I understand your
19 position.

20 MR. RUBINSTEIN: That's correct, Judge. The rest
21 of -- I think goes to -- I don't have any objection at this
22 point. I'll reflect further on it as your Honor's view of
23 without authority provision of the statute.

24 My view of the evidence, though, is that the
25 Government's tried this case, and in their opening indicated

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1 that, for lack of a better word, the defendant cooked the
2 books, so he had a criminal intent and --

3 THE COURT: They have to show intent.

4 MR. RUBINSTEIN: And they haven't. They woefully
5 failed to do that, number one. And the second provision that
6 they argued was that the defendant didn't contribute any funds.

7 THE COURT: Excuse me?

8 MR. RUBINSTEIN: That the defendant contributed no
9 funds, and they're still beating the same drum here. But the
10 evidence, P-1 through P-6 disproves that; over \$30,000 in the
11 first year of the grant that was given to CASI, and they
12 haven't traced -- well, I'm not going to give them any more
13 arguments, frankly, because I'll save that for summation if I
14 have to go that far.

15 So that's the view, whether or not they've established
16 their case is, would be for your Honor to understand,
17 obviously, in the first instance.

18 MR. EVERDELL: Your Honor, if I could just make a
19 few --

20 THE COURT: Well, the jury's got to make that
21 determination, not me. I think --

22 MR. RUBINSTEIN: Well, under Rule 29 it's up to you,
23 Judge.

24 THE COURT: No, I've got to determine under Rule 29
25 that the jury could not reach the Government's -- conclude as

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1 the government argues as a --

2 MR. EVERDELL: Your Honor, just to respond briefly to
3 what was just said. I mean, I think the word trace just
4 betrayed something that's happening in Mr. Rubinstein's mind.
5 There is no tracing requirement.

6 And with respect to the \$37,000 that he's referring
7 to, Ms. Riley's analysis took those checks into account.
8 They're on her spread sheet, government exhibits 110. The fact
9 is, the defendant withdrew almost \$130,000 in loans and then he
10 paid back possibly \$37,000. She treated them as loan
11 repayments, such that it netted out to no additional funds in
12 the, in the pool. So that's taken into account in her
13 analysis. And it doesn't mean we don't -- there is no tracing
14 requirement to show that, you know, let's assume for a moment
15 if we treated the \$37,000 as a separate pool of money, the
16 government doesn't need to show that everything that we allege
17 was improperly bought, came from money that was separate from
18 that \$37,000. It all went into the same pool. There is no
19 tracing requirement. And because of the fact that he took out
20 so much money, it doesn't even matter, because it nets out to
21 zero. So we really are talking about all ATP funds here. But
22 even so, even if we were to consider the \$37,000 Mr. Rubinstein
23 is talking about, as a separate source of funds, it wouldn't
24 matter. I mean even on the rent alone, as the government
25 points out in its letter, that's over \$60,000. So we're still

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1 talking about \$23,000 that had to have come from ATP funds, and
2 that's well over the \$5,000 limit.

3 So this issue of not contributing funds is really not
4 a resident point for the defendant. The government has shown
5 that the funds that were at issue here were ATP funds, and that
6 there really weren't any other sources of funding for CASI at
7 the time this grant was going on. It was all ATP funds. And
8 we did take into account the \$37,000 that he's talking about.

9 And as for intent, it is not just that he cooked the
10 books. We said in our opening, even, that he willfully
11 disregarded what many people around him, CASI officials, his
12 own employees kept telling him that he couldn't use funds to
13 pay for X, Y and Z, rent and utilities in particular. That's
14 just one example. And he disregarded them. He willfully
15 disregarded everything that was being told to him. And that
16 that kind of avoidance, that kind of conscious ignorance of
17 what everybody had told him to do is enough for intent to
18 establish intent in this case. He willfully misapplied those
19 funds, despite what everybody, including Hope Snowden, the one
20 person who could approve the funds for him, told him, which was
21 no, you can't do that.

22 So that's enough for intent, your Honor. We believe
23 that this case is amply sufficient to go to the jury on both of
24 those counts.

25 THE COURT: I thought your position was that he had

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1 been originally told he couldn't pay it for rent or utilities
2 right at the kickoff meeting.

3 MR. EVERDELL: Right from the beginning. And he had
4 several conversations even before the kickoff meeting and after
5 the kickoff meeting, he and Gurfein with Hope Snowden, and with
6 B.J. Lide, both of whom said no, you can't do it. No matter
7 how he framed the issue, he was told repeatedly, no. And he
8 was never told yes on any of those things, and yet he went
9 ahead and started paying rent to himself for CASI's use of his
10 office space, despite the fact that every everybody around him
11 had told him no, including the very officials that he would
12 need to get approval for such costs. So his insistence that he
13 was right and that he would get these things approved, doesn't
14 absolve him of criminal intent. That's just willful blindness
15 on the part of the defendant. Thank you, your Honor.

16 THE COURT: All right. The part that's not clear to
17 me is the reduction of the salary and the, and any repayment of
18 loans that was arranged by reduction in salary.

19 MR. EVERDELL: Well, your Honor, I think if you look
20 at the analysis and spread sheet.

21 THE COURT: Or waiving the right to obtain salary.

22 MR. EVERDELL: Well, okay. He did end up paying
23 himself I think \$35,000 in, quote unquote, salary, right. But
24 if you take -- if you add that to the loans, which total almost
25 \$130,000, plus the rent that he paid himself is \$60,000, he's

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1 getting an enormous amount of money over his salary.

2 THE COURT: I'm not asking you to --

3 MR. EVERDELL: Yeah.

4 THE COURT: -- explain it now, but I'm just saying
5 that's not clear to me.

6 MR. EVERDELL: Okay.

7 THE COURT: We've been told that jurors are going to
8 be late because of subway problem. How do we, stand Robert?

9 THE DEPUTY CLERK: Miss Reyes is here, Miss Ippolito
10 is not. She's not here yet. She's the alternate juror.

11 THE COURT: Well, counsel, we have all the jurors
12 except Ms. Ippolito, who is the alternate juror number --

13 THE DEPUTY CLERK: She was alternate juror number
14 four, now she's alternate juror number three.

15 THE COURT: She thought she might be here by 10:15.
16 Do you think we should wait for her or you think we should go
17 ahead?

18 MR. RUBINSTEIN: I think we should wait for her.
19 She's called a long time ago that she had this problem. She
20 spent --

21 THE COURT: She did call a long time ago, she is
22 alternate three. All right, you both agree?

23 MR. EVERDELL: Your Honor, I think we may -- we
24 probably should wait also because I still don't know how long
25 defense counsel's case is going to take, and I know we lose the

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1 first juror at the end of the week, so we're running low of
2 alternates.

3 THE COURT: Let me go to -- let me ask the government
4 a question.

5 In Mr. Rubinstein's letter about calling the real
6 estate expert, he stated that the government was going to make
7 an argument -- I don't have the letter in front of me. Does
8 anyone have the letter? Does anyone have that letter? Let me
9 see. We seem to have it -- stated that the government was
10 going to make an argument that he made personal improvements to
11 his apartment for his own benefit and to enhance the value of
12 the apartment. I'm not sure the government is going to make
13 that argument at all.

14 MR. KWOK: That's correct, your Honor. I guess
15 especially the latter part, we're not intending to argue that
16 it enhanced the value of his apartment. All we are saying is
17 that he did make some renovations to his apartment, whatever
18 the market value of that improvement, quote unquote,
19 improvements might be, but that he did it unlawfully using
20 grant funds. It doesn't depend on how the market value, quote,
21 renovations that he's --

22 THE COURT: As I understand it, you're not claiming he
23 made the improvements to enhance the value of the apartment or
24 for his own personal benefit, but rather that he was not
25 allowed to, under the terms of the grant, to make those

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1 improvements.

2 MR. KWOK: That's exactly right, your Honor.

3 THE COURT: So if that's the case, if they're not
4 going to argue that, as you say, Mr. Rubinstein, I don't see
5 how the real estate expert's testimony is relevant.

6 MR. RUBINSTEIN: Well, your Honor, first of all, the
7 jury could -- whether I argue it or not, the jury could
8 consider it. Because they're talking about -- they brought out
9 construction, quote, improvements, okay. He made construction
10 to the apartment. Even if we ignore it, doesn't mean the jury
11 is going to ignore it, all right.

12 If they will consent to a stip -- to a charge to the
13 jury that the jury will find -- if they'll stipulate that it
14 diminished the value of the property, then I think we're all
15 right. But once he made structural changes, jurors could say,
16 wow, he got a benefit here. And that shows -- and, as a matter
17 of fact, it shows -- it goes to his intent not to do anything
18 inappropriate, that he had construction --

19 THE COURT: Well, I agree with you that a stipulation
20 would be useful, but it's the terms of the stipulation. I'm
21 not sure that your oral statement is what you intended. But it
22 does seem to me that the parties could stipulate that the
23 there's no claim that the defendant intended to personally
24 benefit by making the improvements to the property.

25 MR. RUBINSTEIN: See, the word improvements is the

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1 problem.

2 THE COURT: Pardon?

3 MR. RUBINSTEIN: There were not improvements. They
4 were improvements for the project, not for the apartment, and
5 that is -- that is the problem. Once you say improvements, the
6 natural thing, in all due respect, flows is that they weren't
7 improvements. They weren't improvements to an apartment. They
8 were an improvement to a business, and there is a distinction.
9 And it goes to his intent because we intend to bring out proof,
10 your Honor, that he had other construction done in this
11 apartment, that were for improvements to the apartment, and he
12 paid for them, personally, which goes right to the heart of his
13 intent. They want to cherry pick here.

14 THE COURT: The issue -- the point is that the
15 government is not contending that he did these things for
16 personal benefit, those improvements, for personal benefit.
17 Their only argument is that those improvements were not
18 permitted under the terms of the grant.

19 MR. RUBINSTEIN: But, Judge, that -- the fact that
20 they don't argue it is irrelevant.

21 THE COURT: No, I'm saying --

22 MR. RUBINSTEIN: Because of the fact of the matter
23 is --

24 THE COURT: -- stipulate to something along those
25 lines.

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1 MR. RUBINSTEIN: All right. Well, I'll approach them
2 on that.

3 THE COURT: All right.

4 MR. RUBINSTEIN: But I do, I do intend to have that
5 witness here this morning, so I'll --

6 THE COURT: Make it clear --

7 MR. RUBINSTEIN: I'll --

8 THE COURT: I just --

9 MR. RUBINSTEIN: Yeah.

10 THE COURT: I thought you might -- it might be best if
11 the parties could work that out, because otherwise I think I'd
12 try and give the government an instruction, or maybe you want
13 me to give an instruction, or maybe that could be the terms of
14 the stipulation, whichever way you want. It's a non-issue.

15 (Counsel conferring)

16 THE COURT: Also, I don't think that the Government's
17 position is that Dr. Karron misappropriated government money
18 for personal use by including -- by payment of medical
19 expenses. It's their position that medical expenses were not
20 provided for in any written plan by the corporation, and that
21 the guidelines for the grant indicated that there had to be a
22 written plan. I may be wrong.

23 MR. RUBINSTEIN: Again, Judge, it's not -- well, first
24 I will hear from them to see if you're wrong. I don't know if
25 you're right or wrong, Judge. I can't speak for them.

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1 MR. KWOK: That's exactly the Government's position,
2 your Honor. We have never taken a position about what are
3 reason or unreasonable plans out there in corporate America.
4 Our only position is that under the terms of the grant it is
5 very clear that you've got to have a written plan. And I don't
6 think it's seriously contested that this company did not have a
7 plan during the period of the grant. That's all we are arguing
8 about. So I don't see the relevance of these witnesses who are
9 going to come in and testify about what generally happens in
10 the industry. That simply has no bearing. Obviously, the
11 first question we're going to ask is, you have no knowledge
12 about the grant.

13 THE COURT: Depends on how you argue. I mean, if you
14 argue along the line that Mr. Rubinstein suggests, and argued
15 that this is a -- these were personal benefits that Mr. Karron,
16 Dr. Karron decided to take, then I think it's a different --

17 MR. KWOK: With respect to fringe benefits, we really
18 don't intend to make that argument. It is true, your Honor,
19 that on some of the expenses they are used for personal
20 benefits such as meals like coffee, and you know, perhaps even
21 cleaning lady for his own apartment. But for fringe benefits
22 we don't intend on arguing that at all.

23 MR. RUBINSTEIN: Judge, they can't have it both ways.
24 They elicit testimony of oral surgery alleged to have been for
25 his improve his jaw, they elicit testimony of electrolysis

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1 treatment, of dental use, they do all of that and then they
2 stand here and say, well, we're not going to argue that he
3 wasn't entitled to. If they'll stipulate, again, that the
4 medical expenses are fair and reasonable, the only question is
5 for the jury, if your Honor -- if they'll agree to a charge,
6 the only question is to the jury as to whether or not it was
7 appropriate to deduct medical expenses, regardless of what they
8 were for. And that would be fair. But --

9 THE COURT: All right.

10 MR. RUBINSTEIN: -- to have this volume of evidence
11 about all the various medical treatments is just --

12 THE COURT: I didn't intend -- I agree with you on it.
13 I'll entertain a motion to strike, if you want, to strike
14 certain testimony if you want.

15 MR. RUBINSTEIN: All right, I would make that motion,
16 Judge.

17 THE COURT: Well, you better tell me what you want
18 struck.

19 MR. RUBINSTEIN: All references to the types of
20 medical treatment that he had. It's irrelevant for their
21 determination, the types of medical expenses that he had;
22 therefore, they have the medical expenses. They don't need to
23 designate them.

24 THE COURT: Well, if the parties agree on such a
25 stipulation, then I'll entertain it and give it to the jury.

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1 (Counsel conferring)

2 MR. KWOK: Your Honor, we just conferred. I think
3 maybe the most sensible course would be for the Court to
4 instruct the jury something along the lines of, you are to
5 disregard about the particular nature of the medical procedures
6 that the medical expenses were used to pay for. You are only
7 to consider that those expenditures were made, something along
8 those lines.

9 THE COURT: Well, I drafted something. I start it
10 this way. You are to disregard -- you are to disregard the
11 testimony you heard with respect to the nature of the medical
12 expenses which were charged by the defendant. The government
13 is only claiming that under the terms of the grant, medical
14 expenses would only be paid pursuant to a health plan.

15 MR. KWOK: Your Honor, can you repeat the last part?
16 I couldn't quite catch the last few words.

17 THE COURT: I said, the government is only claiming
18 that under the terms of the grant medical expenses could only
19 be paid pursuant to a written health plan.

20 MR. KWOK: I think that's fine, your Honor. Thank
21 you.

22 MR. RUBINSTEIN: That's acceptable, your Honor.

23 THE COURT: Did we reach an agreement on the real
24 estate issue?

25 MR. KWOK: I don't think so, your Honor. I suggested

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1 a stipulation along the lines of, you know, there is no
2 evidence to show that the, quote unquote, renovations either
3 increased or decreased the value of the property. That's not
4 acceptable to the defendant because they take the view that it
5 did decrease, but we --

6 THE COURT: I'm sorry, I was rereading my instruction.

7 MR. KWOK: No. We previously conferred. I suggested
8 a proposed stipulation along the lines of, there is no evidence
9 in the case that these, quote unquote, renovations either
10 increased or decreased the value of the property, to take that
11 issue out of the case. But I think Mr. Rubinstein's position
12 is that it did increase the value of the property.

13 THE COURT: Why isn't it there's no -- why isn't the
14 issue -- there's no claim by the government that the defendant
15 personally benefited by any improvements that were made to the
16 apartment. The only claim you're -- the claim you're making is
17 that the improvements were not permitted, as I understand it,
18 were not permitted under the terms of the grant because they
19 exceeded the flexibility portion of the grant which allowed
20 certain reallocation of expenses, but I don't --in other words,
21 what I'm trying to do is think about the issue in the case
22 comes down, as Mr. Rubinstein has stated earlier, as to whether
23 the defendant intended to misapply the monies without
24 authority.

25 MR. RUBINSTEIN: Judge, that's why I think that the

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1 word improvements is just an inappropriate word.

2 THE COURT: You don't like it, improvements?

3 MR. RUBINSTEIN: No, because I intend to argue that
4 this was site preparation, and it wasn't an improvement. It's
5 site preparation, which is permissible under the grant. So the
6 whole connotation of improvements means it benefited the
7 property -- it might have benefited an office, but it didn't
8 benefit residence. And I'm not asking that they say that
9 anything be said about that it diminished the value of the
10 property. I'm only asking that it be, you know, clear that
11 this was not any benefit to Dr. Karron financially.

12 Judge, could I run out for personal reason?

13 THE COURT: Yeah, let's all do that. The juror ought
14 to be here any minute.

15 MR. RUBINSTEIN: Thank you.

16 (Recess)

17 THE COURT: All right, bring in the jury, Robert.

18 (Jury entering)

19 THE COURT: All right, please be seated.

20 Ladies and gentlemen, I guess you had as hot a time
21 getting here as I did. I walked for half an hour, and I must
22 say, stay out of the sun.

23 But on Friday we went over the case and I was given
24 assurance that we ought to be done this week, which is what I
25 know you're anxious to know, and so let's see how it goes.

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1 The next thing is that I got an instruction to give
2 you, and that is that you're to disregard any testimony you
3 heard with respect to the nature of the medical expenses which
4 were charged by the defendant. The government is only claiming
5 that under the terms of the grant, medical expenses could only
6 be paid pursuant to a written health plan.

7 All right. Then your next witness?

8 MR. EVERDELL: Yes, your Honor. The government calls
9 Robert Benedict.

10 ROBERT BENEDICT,

11 called as a witness by the government,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. EVERDELL:

15 THE COURT: Please proceed.

16 MR. EVERDELL: Thank you, your Honor.

17 Q. Good morning, Mr. Benedict.

18 A. Good morning.

19 Q. What do you do for a living?

20 A. I'm a grant administrator and grant manager.

21 Q. How long have you been doing that for?

22 A. I've been doing it for 15 years.

23 Q. Now, what do you do as a grant manager or grant
24 administrator?

25 A. I manage the financial aspects and program aspects of

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Benedict - direct

1 federal grants, state grants.

2 Q. When you say you manage the financial aspects, what do you
3 mean by that?

4 A. I make sure all of the expenditures are allowable to the
5 grant, and that you file reports as required by the granting
6 agency.

7 Q. And where did you work as a grant manager?

8 A. I worked for IBM for 35 years, nine years as a grant
9 manager, and I worked for Axiom as a consultant for two more
10 years on IBM grants. And then I worked for a year for CASI, or
11 six months for CASI, and five years for communities and schools
12 of Brunswick County, North Carolina.

13 Q. And prior to becoming a grant manager, what did you do for
14 a living?

15 A. I was an accountant and finance manager for IBM.

16 Q. For how long?

17 A. Nine years in, or 12 years in accounting and 23 years in
18 management.

19 Q. And what's your educational background?

20 A. I have a degree in accounting from Champlain College in
21 Burlington, Vermont, further studies non-grant related at the
22 University of Vermont, and Wharton School of Business at the
23 University of Virginia, and I have a certification in grant
24 management from management concepts.

25 Q. Mr. Benedict, are you familiar with an organization called

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1 the National Institute for Standards and Technology?

2 A. Yes, sir, I am.

3 Q. Is that sometimes called NIST?

4 A. Yes.

5 Q. And what is NIST?

6 A. NIST is a branch of the federal government. And my
7 experience with NIST is that they have a program called ATP,
8 which is Advanced Technology Programs, and they fund high risk
9 technology projects.

10 Q. Have you done any grant managing or accounting work for
11 companies that received ATP grants?

12 A. Yes. The nine years I was with IBM and the two years as a
13 consultant, were all with NIST ATP grants.

14 Q. And how many grants did you work on with IBM and the
15 consultants that you mentioned?

16 A. Three. There was a single grant and two consortium grants.

17 Q. And about when were those grants awarded?

18 A. Those grants were between 1994 and 2002, the end of 2002.

19 Q. And what did you do as the grant manager for those grants?

20 A. I managed, as I said earlier, the financial aspects of
21 those projects. In the single grant it was just IBM, so it was
22 filing the reports with NIST ATP.

23 For the IBM project and the consortium, it was filing
24 the financial reports for the nine consortium members, plus
25 IBM, and making sure that they all had their audits in, and all

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1 the financial data as allowed by the grant.

2 Q. And you mentioned you also worked briefly for CASI, is that
3 right?

4 A. Yes, sir.

5 Q. Did CASI receive an ATP grant?

6 A. Yes, sir, it did.

7 Q. Who is the head of CASI?

8 A. Dr. Karron.

9 Q. Did there come a time when you met Dr. Karron in person?

10 A. Yes, sir, I did.

11 Q. Did you -- do you see Dr. Karron here in the courtroom
12 today?

13 A. Yes, sir.

14 Q. Could you please point him out and identify an article of
15 clothing he's wearing?

16 A. He's the gentleman over there with the, excuse me, with the
17 red tie.

18 THE COURT: The record will reflect that the witness
19 has identified the defendant.

20 Q. How did you first meet the defendant?

21 A. I was at an ATP proposers conference in the Spring of 2001.
22 Dr. Karron stood up in the conference during part of the
23 presentations in the Q. and A. session and he said that he had
24 just received a grant and was wondering if anybody had any idea
25 where he could get some financial guidance with the grants.

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1 Q. Before we get to what Dr. Karron said, can you just
2 describe what the proposers conference was?

3 A. Proposers conference is a conference for people who are
4 interested in submitting applications for ATP grants, and for
5 people who have received ATP grants to find out what rules
6 guidance they have to follow in order to meet the requirements
7 of compliance requirements of the grants.

8 Q. And are these ATP people present at that proposal?

9 A. Yes, sir, they are.

10 Q. And what, if anything, did they discuss about the rules
11 about the ATP grant?

12 A. They talk about --

13 THE COURT: At that conference.

14 Q. Yes, the proposers conference.

15 A. They talked about the financial requirements, the reporting
16 requirements, what the federal guidelines are for, and rules
17 are for grants, and what reports had to be filed when audits
18 had to be filed, those kind of items.

19 Q. What, if anything, did they discuss about spending the
20 grant money?

21 A. The grant money is to be spent only as the budget allows
22 and as the grant specifies, and in accordance with the cost
23 principles that rule those grants.

24 Q. Did they discuss any of the cost principles?

25 A. They didn't specifically discuss individual cost

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1 principles, but they talked about which cost principles
2 applied.

3 Q. Such as?

4 A. A-110 for nonprofits, A-87 for profits, 31-2, which is a
5 FAR regulation.

6 Q. Now, why were you at that meeting?

7 A. I was at that meeting representing IBM. We were looking at
8 doing another application.

9 Q. And you mentioned that the defendant stood up at the
10 meeting, is that right?

11 A. Yes.

12 Q. And what exactly did he say?

13 A. He asked if there was anybody who could give him guidance
14 on where he could get some financial assistance with his grant.

15 Q. And did you in fact meet defendant?

16 A. Yes, sir, I did.

17 Q. And how did that happen?

18 A. I met him at a breakout session during the conference. I
19 approached him and I said, I wasn't looking for a job, I was a
20 grant manager; that if he had any questions, I would be happy
21 to do what I could to answer them.

22 Q. And what was his response?

23 A. He asked me, why I would do that? And I said, you asked
24 for help and so I'm offering it.

25 Q. Did you ask for any payment for your advice?

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1 A. No, sir, I did not.

2 Q. Did the defendant ever take you up on your offer to give
3 him advice on questions regarding the ATP funds?

4 A. I received a phone call about three months, four months
5 later from Lee Gurfein, who introduced himself as the current
6 grant administrator for Dr. Karron, and he asked me some
7 questions.

8 Q. Now, what questions did he ask you?

9 A. He was asking me how they could get the expenditures
10 associated with his office covered by the grant.

11 Q. When you say expenditures associated with his office, what
12 do you mean?

13 A. His rent.

14 Q. And what did you tell him?

15 A. I asked him if it was included in his budget -- I suspected
16 it would not be, because --

17 MR. RUBINSTEIN: Object to what he suspected.

18 THE COURT: Objection sustained as to what you
19 suspected.

20 A. I asked him if it was covered in his budget, and he said it
21 wasn't. I told him the only way that he could get the rent
22 covered was to do a budget amendment and get ATP to authorize
23 it.

24 Q. And what was his response, if anything?

25 MR. RUBINSTEIN: Objection to -- who is this, Gurfein?

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